No. ——

In the United States Circuit Court of Appeals for the Ninth Circuit

CITY OF COEUR D'ALENE, IDAHO, A MUNICIPAL CORPORATION; J. K. COE, MAYOR; A. GRANTHAM, TREASURER; WILLIAM T. REED, CLERK; ALFRED SWANSON, JOHN FREDERICK, FRANK H. LAFRENZ, JOSEPH LOIZEL, O. M. HUSTED, RICHARD WEEKS, S. H. MCEUEN, AND J. H. POINTNER, MEMBERS OF THE CITY COUNCIL OF SAID CITY OF COEUR D'ALENE, IDAHO; AND HAROLD L. ICKES, AS FEDERAL EMERGENCY ADMINISTRATOR OF PUBLIC WORKS, APPELLANTS

v.

THE WASHINGTON WATER POWER COMPANY, A CORPORATION, APPELLEE

UPON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF IDAHO, NORTHERN DIVISION

APPENDIX TO MOTION OF APPELLANT, HAROLD L. ICKES, AS FEDERAL EMERGENCY ADMINISTRATOR OF PUBLIC WORKS, TO REMAND CASE TO THE DISTRICT COURT AND MEMORANDUM IN SUPPORT THEREOF

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1. IMPORTANT DIFFERENCES BETWEEN THE PROPOSED NEW CONTRACT AND THE PROPOSED OLD CONTRACT

The proposed new contract differs from the proposed old contract in the following significant respects:

The old contract provided that the Government shall be under no obligation to pay for any of the bonds or to make any grant unless and until the Borrower shall adopt a rate ordinance, satisfactory to the Administrator in form, sufficiency, and substance. Certain requisites of this ordinance were set forth in detail (Paragraph 23 (i) of Part I). This provision as to rates is completely eliminated from the new agreement. The new instrument confers no authority whatever on the United States over rates, and, in fact, specifically provides as follows:

> 12. The Administrator shall have no rights or power of any kind with respect to the rates to be fixed or charged by the project.

In addition, the provision whereby the City agreed to cease active operation of its Diesel plant and purchase power from Grand Coulee, Washington, when such power shall become available, has been eliminated from the new agreement.

In the case of *Arkansas-Missouri Power Company* v. *City of Kennett,* 78 Fed. (2d) 911 (decided by the Circuit Court of Appeals for the Eighth Circuit), the Court held that the loan and grant agreement between the Public Works Administration and the City of Kennett was invalid because the city had improperly attempted to delegate legislative power to the Federal government. The court said:

> While the Government, under this loan agreement, does not relieve the city of all responsibility in connection with the construction of the municipal plant, it certainly leaves to the city council little uncontrolled discretion with respect thereto. It is apparent that, while the Government was willing to finance the city, it insisted upon retaining sufficient control over plans, consruction contracts, labor, and materials, to insure that the money furnished would be spent in the way the government thought it should be spent, whether that was in accord with the ideas of the city council or not.

It is apparent that the provisions which the court had in mind were those which gave the Administrator the power, even after the plans and specifications were approved, to inject his own judgment and to overrule the judgment of the city with respect to the selection of labor and material and the manner of construction and to supervise the work during its progress.

Under that contract, whether or not the city was living up to its terms was to be determined, either by a subjective test, i. e., the satisfaction of the Administrator, or by rules and regulations to be adopted or changed by the Federal Government at will in the future. At the time the agreement was executed the city council could not tell with certainty exactly what it was required to do or what it would be required to do in the future. This test

of compliance, and this agreement to be subject to future actions of the other contracting party, is what the court condemned in the *Kennett* case.

The proposed new contract contains no such provisions. The test of compliance appears on the face of the contract and is not subject to the Administrator's discretion. Wage rates and hours and conditions of employment are fixed in advance. The provisions of the contract may not be changed except by mutual consent. There is no control over the details of construction, nor any right to inspect at will. Plans and specifications must be approved in advance by the Government only for the purpose of determining whether the project will be constructed in such a manner as to comply with the terms of the Acts of Congress. After the plans and specifications are approved, they may not be changed except by mutual consent. At the time the contract is signed the city knows exactly what obligations it is undertaking. In signing, the city exercises its discretion. It does not delegate it.

The new contract eliminates all those provisions objected to by the court in the *Kennett* case. It expressly provides that, once the Administrator has approved the plans and specifications and a certificate of purposes (setting out in detail the amounts and purposes of the expenditures which the city proposes to make in connection with the project) funds must be advanced by the Administrator on any requisition accompanied by a signed certificate

showing that the funds are to be expended in accordance with the plans and specifications and the certificate of purposes theretofore approved. Included in clause 11 of the new contract, is Paragraph (e), which provides that the project will be constructed in accordance with the provisions of an attached "Exhibit A", and that the provisions of Exhibit A will be incorporated by the city in all contracts (except sub-contracts) which it makes for the construction of the project. The provisions, found in Exhibit A, set forth wage rates and hours and conditions of employment. By the terms of the new contract, therefore, the city agrees, once and for all, in the exercise of its lawful discretion, that it will in its contracts with contractors provide for certain wage rates, hours, and conditions of employment, but the Administrator reserves no right whatsoever to interfere with or alter or modify those provisions, or to supervise their performance. The city, having once and for all accepted those provisions of the contract, is bound thereby, of course; but there is nothing in the contract which requires the city to do anything either in initially accepting those provisions of the contract or thereafter, which would constitute an abdication of its own judgment or submission to the judgment or discretion of the Administrator.

Specifically, the following additional changes have been made:

The provision of Paragraph 3, Part I, that the determination by the Administrator of the cost of labor and materials employed upon the project shall be conclusive, has been eliminated.

The provision of Paragraph 5, Part I, that each requisition shall be accompanied by such documents as may be requested by the Administrator has been eliminated. The new contract obligates the Government to honor requisitions if the papers supporting same are complete.

The provision in Paragraph 6, Part I, that the requisition must be satisfactory in form and substance to the Administrator, and that the amount of payments to be made pursuant thereto shall be determined in each instance by the Administrator, and that the payments will be made at such place or places as the Administrator may designate, have been eliminated, as has the provision that the Government shall be under no obligation to take up and pay for bonds beyond the amount which, in the judgment of the Administrator, is needed to complete the project. The new agreement itself fixes the amount of money to be paid by the Government. Similar language in Paragraphs 7, 8, and 9 of Part I, reserving to the discretion of the Administrator the determination of the time and amount of payment, is eliminated.

The provision of Paragraph 10 of Part I of the old proposed contract that all moneys received by the city shall be deposited in a bank or banks

which shall be satisfactory to the Administrator has been changed to provide that the money shall be deposited in a bank or banks which are members of the Federal Reserve System and of the Federal Deposit Insurance Corporation.

Paragraph 13 of Part I of the old proposed agreement specifying that the project shall be constructed in accordance with plans, drawings, specifications, and construction contracts which shall be satisfactory to the Administrator, and under such engineering supervision and inspection as the Administrator shall require, has been eliminated; the agreement now makes it a condition precedent to payment of funds by the Government that plans and specifications shall be filed with, and once and for all accepted by the Government for the purpose of showing that the applicant will comply in all respects with the terms of Title II of the National Industrial Recovery Act. There is no control over the letting of construction contracts, and the right of inspection and supervision of the work is reserved to the city. The provision that no materials or equipment shall be purchased subject to any chattel mortgage, conditional sale, or title retention agreement, has been eliminated. There is also eliminated the provision of Paragraph 20 of the old agreement that the Borrower will take such steps as may be necessary to validate the bonds.

Paragraph 21, Part I, of the old proposed contract providing that the project shall never be

named except with the written consent of the Administrator, has been changed to provide that the project shall not be named for any living person.

Paragraph 22, Part I, of the old proposed contract, giving the Administrator the right to cancel the agreement for undue delay, is eliminated. Similarly eliminated are the provisions giving the Administrator the right to cancel the agreement if he shall not be satisfied that the city has complied in all respects with the terms of the agreement, if he shall not be satisfied as to the legality of the bonds, if any document submitted by the city shall be found to be incorrect or incomplete in any respect, if he shall not be satisfied as to the maturities of the remaining bonds, and if the Borrower shall not be able to prove to the satisfaction of the State Engineer that the proposed source of water supply is suitable, both as to quality and quantity of water, and that it is necessary and desirable to abandon the present use of water from Lake Coeur d'Alene. The condition that the Borrower must furnish evidence to the satisfaction of the Administrator that the Washington Water Power Company can be required to furnish water and electric service to the people of the city until the project has been completed, has been eliminated from the agreement.

Paragraph 1 of Part II of the old proposed contract provided that all work on the project shall be done subject to the rules and regulations adopted

by the Administrator to carry out the purposes and control the administration of the Act, but the old contract was so worded that it gave the Administrator the right (a) to alter those rules and regulations (even after the contract with the city was executed), and (b) to supervise their performance. The new proposed contract makes a fundamental change in this respect. It provides in clause 11 (e), that the project will be constructed in accordance with the provisions of an attached "Exhibit A", and that the provisions of Exhibit A will be incorporated by the city in all contracts (except sub-contracts) which the city makes for the construction of the project. Exhibit A sets forth hours and conditions of employment, and provides that wage rates, which must be predetermined in accordance with the provisions of the law of Idaho or of local custom, shall be inserted in all construction contracts. The Administrator reserves no right whatsoever to interfere with or alter or modify those provisions or to supervise their performance.

Paragraph 2 (g) of Part II of the old contract providing that the Board of Labor Review shall hear all labor issues arising under the contract is eliminated, as is the provision of Paragraph 2 (h), that the minimum wage rates established shall be subject to change by the Administrator. The requirement that certain provisions of Title I of the National Industrial Recovery Act shall be observed is eliminated, as is the provision that compensa-

tion insurance shall be satisfactory to the Administrator. The new proposed contract provides that compensation insurance and public liability and property damage insurance in amounts sufficient to provide the necessary coverage shall be maintained. The provision giving the Administrator the right to inspect all work as it progresses, and all payrolls, records of personnel, invoices of materials, etc., is eliminated, as is the provision that all reasonable rules and regulations which the Public Works Administration may prescribe shall be observed in the performance of the work. The provision that no bids shall be received from any sub-contractor who has not signed U. S. Government Form No. P. W. A. 61, has been eliminated. The provision giving the Administrator certain powers with respect to the termination of the construction contract for breach thereof, has been changed so as to vest all power in this respect in the city.

2. OPINION OF CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT IN THE GREENWOOD COUNTY CASE

United States Circuit Court of Appeals, Fourth Circuit

No. 4003

GREENWOOD COUNTY AND E. L. BROOKS, S. A. AGNEW AND L. I. DAVIS, MEMBERS OF AND CONSTITUTING THE FINANCE BOARD OF GREENWOOD COUNTY, AND HAROLD L. ICKES, AS FEDERAL EMERGENCY ADMINISTRATOR OF PUBLIC WORKS, APPELLANTS,

versus

DUKE POWER COMPANY AND SOUTHERN PUBLIC UTILITIES COMPANY, APPELLEES

Appeal from the District Court of the United States for the Western District of South Carolina, at Greenville

Argued January 8, 1936. Decided February 22, 1936

Before PARKER, NORTHCOTT, and SOPER, Circuit Judges

W. H. Nicholson and D. W. Robinson, Jr. (R. F. Davis and Robinson & Robinson on brief), for Appellants, Greenwood County and its Finance Board; Alexander Holtzoff, Special Assistant to the Attorney General, and Jerome N. Frank, Counsel for the Federal Emergency Administrator of Public Works (James W. Morris, Assistant Attor-

ney General, and John W. Scott, Special Assistant to the Attorney General, on brief) for Appellant, Harold L. Ickes as Federal Emergency Administrator of Public Works; and W. S. O'B. Robinson, Jr., and Newton D. Baker (W. R. Perkins, H. J. Haynsworth, J. H. Marion, and W. B. McGuire, Jr., on brief) for Appellees.

PARKER, *Circuit Judge:* This is an appeal in a suit which was instituted by the Duke Power Company and its subsidiary corporation, the Southern Public Utilities Company, against the South Carolina County of Greenwood and the members of its finance board, to enjoin them for constructing an electric power plant at Buzzard Roost on the Saluda River, and from obtaining a loan and grant from the Federal Public Works Administration for the purpose of constructing it. Harold L. Ickes, as Federal Administrator of Public Works, was permitted to intervene and file answer as a defendant. The bill of complaint, as subsequently amended, asked injunctive relief on the following grounds: (1) that the project could not be constructed within the limits of the proposed loan and grant of $2,852,000.00 and would not earn sufficient revenue to be self liquidating, as required of projects to be financed by the Public Works Administration; (2) that the construction and operation of the power plant for the production and sale of electric current in large part to persons and corporations wtihout the limits of Greenwood County was beyond the county's powers and would subject

plaintiffs to competition based upon illegal and ultra vires activities on the part of the county; (3) that the proposed power plant was a purely local project, not connected with interest to commerce, and that, if the Act of Congress under which the Administrator was acting in agreeing to make the loan and grant (Title II of the National Industrial Recovery Act) should be construed as authorizing the loan or grant for such a project, the Act was to that extent invalid in that it exceeded the constitutional limits of congressional power; (4) that the Act was invalid in that it attempted to delegate legislative power to officials of the executive department of the government; and (5) that, in agreeing to make the loan and grant in question, the Administrator was exceeding his lawful authority and was engaged in an attempt to regulate intrastate power rates in derogation of the reserved rights of the states.

A motion by defendants to dismiss the bill was denied (see *Duke Power Co. et al.* v. *Greenwood County,* 10 Fed. Supp. 854); and the case was then heard on the merits and much evidence was taken relative to the first of the grounds upon which injunction was asked. The District Judge held that there was substantial evidence to support the finding of the Administrator that the project could be constructed within the limits of the loan and grant and would be self liquidating and that his conclusion with regard thereto was binding upon the courts. (See 12 Fed. Supp. 71.) He held also that

he was bound by the decision of the Supreme Court of South Carolina in the case of *Park* v. *Greenwood County,* 174 S. C. 35, 176 S. E. 870, as to the power of Greenwood County to issue the bonds and enter upon the project in question, not upon the principle of res adjudicata, but because the decisions of the highest court of a state are binding in the interpretation of its constitution and statutes. (See 10 Fed. Supp. 859.) He found, however, that the rates which the county power plant would charge would be substantially less than those charged by the plaintiffs; that it was the policy of the Administrator in making loans and grants to municipally owned power projects to require that the enterprise so aided establish rates lower than competing private companies and thus bring about a reduction of their rates; that the contract between the Administrator and the county stipulated as a condition of the loan and grant that the county should adopt a resolution satisfactory to the Administrator providing for the rates to be charged; and that the business of plaintiffs in the territory to be served by the plant of the county would be seriously and permanently injured by the erection of that plant and the competition which would result therefrom. (See 10 Fed. Supp. 857 and 858 as approved in 12 Fed. Supp. at 71 and 72.) He held that, because of the threat to their business which would result from this competition, plaintiffs had a standing in court to question the validity

of the Act under which the loan and grant were to be made, and that that Act was unconstitutional, both because it was beyond the power of Congress, whether measured by the commerce clause or the general welfare clause, and because it delegated legislative power to the executive. See 12 Fed. Supp. at 72 and 73. Injunction was accordingly granted restraining the defendants from carrying out their grant and loan agreement of December 8, 1934, restraining the Administrator of Public Works from paying over to Greenwood County or its officers any funds of the federal government for the purpose of constructing or operating the Buzzard Roost project, and restraining the county and its officers from receiving federal funds for that purpose. From this decree defendants appealed to this court and docketed their appeal as case No. 3971, the record in which should be considered as a part of the record on the appeal before us.

On November 30, 1935, shortly before the appeal in No. 3971 was to be heard in this court, a contract was executed between the Administrator and the county abrogating the contract of December 8, 1934, and prescribing new terms and conditions for the making of the loan and grant, but not changing the amount of either of them. This contract eliminated those provisions of the old contract which had been held ultra vires the powers of a municipal corporation in *Arkansas-Missouri Power Co.* v. *City of Kennett, Mo.* (C. C. A. 8th), 78 Fed. (2d) 911, and

also the provisions of the old contract which had been held by the court below to give the Administrator control over the rates to be charged by the county. A new provision designed to eliminate any contention that the loan and grant were made upon conditions not embodied in the contract was inserted in the following language:

> 13. This agreement is made with the express understanding that neither the loan nor the grant herein described is conditioned upon compliance by the applicant with any conditions not expressly set forth herein. There are no other agreements or understandings between the applicant and the government or any of its agencies in any way relating to said project.

Under the terms of this contract the Administrator retained no control over the work to be done; but it was specified that certain conditions as to wages, hours of work, employment of convict labor, collective bargaining, etc., should be observed by the county and by contractors and subcontractors on the project.

Upon the contract of November 30, 1935, being called to our attention, we immediately remanded the case to the court below to the end that that court might reconsider its decision in the light of the contract and take such further action as might be appropriate. This was done because in our opinion there was probability that the case had been rendered moot, at least as to some of the

questions involved, by the execution of the new contract; and we thought that, in view of the changed situation, the lower court should be revested with jurisdiction of the entire cause with power to enter such decree as might be deemed appropriate.[1] A hearing was thereupon had in the court below at which the new contract was introduced in evidence and the testimony of the Federal Administrator of Public Works and the officers of the county was taken with reference thereto. The court excluded a part of the testimony of the Administrator which we think should have been admitted, in view of the contention that his action in approving the loan and grant to the county was for the purpose of affecting power rates; but, as the testimony excluded as well as that admitted has been certified in the record and is before us, no harm has resulted from this action.

The Administrator, on this hearing, denied that he intended to exercise any control whatever over the rates to be charged by the county and stated that

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[1] That the lower court may be thus revested with jurisdiction of the cause after the expiration of the term at which the decree appealed from was entered, in order that it may give consideration to some phase of the case which it has overlooked or may take into consideration matters which have occurred since the taking of the appeal, is too clear for discussion. See *U. S.* v. *Anchor Coal Co.*, 279 U. S. 812; *Atherton Mills* v. *Johnston*, 259 U. S. 13; *Hammond* v. *Schappi Bus Line*, 275 U. S. 164, 171, 172; *Wyant* v. *Caldwell* (C. C. A. 4th), 67 Fed. (2d) 372; *Finefrock* v. *Kenova Mine Car. Co.* (C. C. A. 4th), 22 Fed. (2d) 627.

the loan and grant were made pursuant to the fundamental purpose of the Public Works Administration "to relieve unemployment and increase purchasing power through the construction of useful public works", and that the interest of the Public Works Administration in the question of competitive rates went merely to the question as to whether or not the rates to be charged would repay the loan made by the administration within the time limit of the contract. Specifically, with reference to the loan to Greenwood County, he testified:

> We did not approve rates. We are not interested in rates except in so far as our experts advised us that by charging those rates at which power could be sold they could liquidate their obligation to us. The rates set out in the bond resolution of the county are initial rates. There is no reservation of the right on our part to change those rates in the future. I don't know whether the contracts which Greenwood County made for the sale of power to be produced by the project were presented to anyone in the Public Works Administration or not. They were not presented to me personally. Our experts advised us that at that rate our loan would be liquidated. It was the same interest any banker would have in buying these bonds. We would not have entered into a contract if the rates had not shown a sufficient, prospective income, based on those rates to liquidate the loan. The rates as such were not approved by the P. W. A. authorities. We

knew that those rates were sufficient. If the rate were a lower rate applied to a larger sale of power which would have been sufficient in the aggregate to liquidate the obligation to the United States that would have been a satisfactory arrangement. On the other hand, if it had been a higher rate, applied to a lesser amount of power sold which would yield enough to liquidate the obligation of the United States that would have been a satisfactory arrangement. We did not take into consideration the rates charged by the Duke Power Company in making this contract.

And at another place he said:

Q. In the case of the Greenwood County project, you would have made the loan and grant, regardless of your views as to whether the Duke Power Company's rates were, or were not, high?—A. We would have made the loan and grant to Greenwood County, regardless of the rates, or our opinion of the rates, of the Duke Power Company, if Greenwood County had the legal authority to enter into the contract with us, and if Greenwood County could satisfy us that it could liquidate the loan that we made. Those were the considerations.

He further testified that the statement of one C. E. Rose at the former hearing as to the policy of the Public Works Administration was not correct. The pertinent portion of Mr. Rose's testimony on the former hearing is as follows:

> The Duke Power Company will be the only competitor of the Buzzard Roost project, so we estimated a rate schedule for the project which would yield 6.5 mills for the industrial consumers of good load capacity, and 8.2 mills as a municipal rate, both of which are under the Duke rates. The Duke rates do not meet with the approval of the P. W. A. authorities. We think they are excessive, and it is because we think they are excessive that the P. W. A. approved this grant. That is one of the reasons for the approval of the grant. As to whether, if the Duke rates had met with the approval of the P. W. A. authorities the loan and grant would have been approved, I can say that we (meaning P. W. A.) have never approved a project where a privately owned company has made a satisfactory adjustment. That doesn't mean we will not. It is the policy of the P. W. A. not to approve loans and grants where privately owned utilities have reduced their rates satisfactory to the P. W. A., and it was in line with that policy and because of that policy that I made the investigation as to the Duke rates.

The judge below, after hearing this evidence and considering the new contract, held that there was nothing which called for a modification of his former findings and that "whatever might be the purpose, policies, and practices of the Public Works Administration in reference to competitors, in financing the instant enterprise the result to the plaintiffs

would be the same. The lower rates which the enterprise may be able to charge because of government aid through its loan and grant—particularly the latter—would effectively establish a 'yardstick' or a rate of charge which plaintiffs must inevitably meet, or have their business pro tanto destroyed." A decree was entered, therefore, continuing the injunction theretofore granted and making it applicable to the new contract; and from that decree the defendants again appealed.

There can be no question as to the correctness of the holding of the trial judge that he was bound by the finding of the Administrator of Public Works to the effect that the project could be constructed within the limits of the loan and grant and would be a self liquidating project within the meaning of the act of Congress and the policy of the Public Works Administration. That the presumption of correctness attaches to the action of administrative officers with respect to matters committed to their discretion, and that, even where judicial review is provided for, the exercise of such discretion will not be disturbed if based upon substantial testimony and not manifestly arbitrary and unreasonable, is too well settled to admit of discussion. And it is equally clear that we are bound by the decision of the South Carolina Supreme Court in *Park* v. *Greenwood County,* 174 S. C. 35, 176 S. E. 870, to the effect that the construction of the power plant and the issuance of revenue bonds to pay for same,

as contemplated by the contract with the Administrator of Public Works, was within the powers of Greenwood County.[2] The questions upon this appeal, therefore, are narrowed to three, viz: (1) Is the Act of Congress under which the loan and grant are to be made a valid and constitutional enactment? (2) Will the action of the Administrator of Public Works in making the loan and grant be a valid exercise of power under the Act? And (3) are the plaintiffs in position to ask an injunction in any event?

1. The Constitutionality of the Statute

The statute under which the Administrator is acting in making the loan and grant to Greenwood County is Title II of the National Industrial Recovery Act, 48 Stat. 200, under which $3,300,000,000 was appropriated by the Congress for the purpose of relieving unemployment through the country. Section 201 of that title authorizes the President to create a Federal Emergency Administration of Public Works, all of the powers of which shall be exercised by an "Administrator" to be appointed by the President. Section 202 provides (48 Stat. 201):

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[2] See also the later decision of *Clarke* v. *South Carolina Public Service Authority*, S. C. , 181 S. E. 481, which holds, in addition, that neither the South Carolina statute nor the contract with the Administrator of Public Works is to be condemned as an unconstitutional delegation of legislative authority to the lending agency.

The Administrator, under the direction of the President, shall prepare a comprehensive program of public works, which shall include among other things the following: (a) Construction, repair, and improvement of public highways and park ways, public buildings, and any publicly owned instrumentalities and facilities; (b) conservation and development of natural resources, including control, utilization, and purification of waters, prevention of soil or coastal erosion, development of water power, transmission of electrical energy, and construction of river and harbor improvements and flood control * * *; (c) any projects of the character heretofore constructed or carried on either directly by public authority or with public aid to serve the interests of the general public; (d) construction, reconstruction, alteration, or repair under public regulation or control of low-cost housing and slum-clearance projects; (e) any project (other than those included in the foregoing classes) of any character heretofore eligible for loans under subsection (a) of section 201 of the Emergency Relief and Construction Act of 1932, as amended, and paragraph (3) of such subsection (a) shall for such purposes be held to include loans for the construction or completion of hospitals the operation of which is partly financed from public funds, and of reservoirs and pumping plants and for the construction of dry docks; * * *.

Section 203 provides:

> (a) With a view to increasing employment quickly (while reasonably securing any loans made by the United States) the President is authorized and empowered, through the Administrator or through such other agencies as he may designate or create, (1) to construct, finance, or aid in the construction or financing of any public works project included in the program prepared pursuant to section 202; (2) upon such terms as the President shall prescribe, to make grants to states, municipalities, or other public bodies for the construction, repair, or improvement of any such project, but no such grant shall be in excess of 30 per centum of the cost of the labor and materials employed upon such project; (3) to acquire by purchase, or by exercise of the power of eminent domain, any real or personal property in connection with the construction of any such project, and to sell any security acquired or any property so constructed or acquired or to lease any such property with or without the privilege of purchase * * *; Provided, That in deciding to extend any aid or grant hereunder to any state, county, or municipality the President may consider whether action is in process or in good faith assured therein reasonably designed to bring the ordinary current expenditures thereof within the prudently estimated revenues thereof. The provisions of this section and section 202 shall extend

to public works in the several states, Hawaii, Alaska, the District of Columbia, Puerto Rico, the Canal Zone, and the Virgin Islands.

Section 206 provides:

All contracts let for construction projects and all loans and grants pursuant to this title shall contain such provisions as are necessary to insure (1) that no convict labor shall be employed on any such project; (2) that (except in executive, administrative, and supervisory positions), so far as practicable and feasible, no individual directly employed on any such project shall be permitted to work more than thirty hours in any one week; (3) that all employees shall be paid just and reasonable wages which shall be compensation sufficient to provide, for the hours of labor as limited, a standard of living in decency and comfort; (4) that in the employment of labor in connection with any such project, preference shall be given, where they are qualified, to ex-service men with dependents, and then in the following order: (A) To citizens of the United States and aliens who have declared their intention of becoming citizens, who are bona fide residents of the State, Territory, or district in county in which the work is to be performed, and (B) to citizens of the United States and aliens who have declared their intention of becoming citizens, who are bona fide residents of the State, Territory, or district in which the work is to be performed; Pro-

> vided, That these preferences shall apply only where such labor is available and qualified to perform the work to which the employment relates; and (5) that the maximum of human labor shall be used in lieu of machinery wherever practicable and consistent with sound economy and public advantage.

We think that the enactment of these provisions of the statute was well within the power of Congress. It may be conceded that, under ordinary circumstances, the power would not exist to raise and expend funds for constructions local in character and not connected with the exercise of any of the powers of regulation expressly conferred upon the federal government; but the circumstances under which this statute was enacted were by no means ordinary and the construction contemplated was not of isolated projects but of a vast program of public works intended to relieve a condition of unemployment which was nation wide in scope and had become a menace, not merely to the safety, morals, health, and general welfare of vast numbers of the people, but also to the stability of the government itself. As was well said by Judge Otis in *Missouri Utilities Co.* v. *City of California,* 8 Fed. Supp. 454, 458:

> Those who have studied the history of the world as well as those who are familiar only with contemporaneous events throughout the world know that the existence of a nation may be imperiled by foreign aggression not

only, by civil wars not only; it may be imperiled, it may be destroyed utterly, by the unreasoning rage of masses, a rage aroused by hunger, by want in every form, by a sense of injustice, a rage stirred up alike by sincere and honest, as well as by villainous leaders. It is a rage which does not analyze, which does not discriminate. It is not content with driving the money changers from the temple; it destroys the temple itself. Everyone should know that in general economic distress is possibility of grave danger to the established order. The political branches of government, that is, the executive and legislative branches, must guard and protect the national existence, if it is to be done at all, and that they can do only through the enactment and enforcement of laws. It is for them to decide whether a situation has arisen which endangers the existence or general welfare of the nation; it is for them to decide what measures shall be taken to avert dangers arising from that situation. With these decisions or their wisdom, courts and judges have nothing to do save only in that case in which it has most clearly been demonstrated that the political branches of government not only have usurped power not granted them by the Constitution, but in so doing directly have injured a litigant who has come to the courts for relief.

In the light of our history, it is idle to say that, in the presence of such a situation as confronted Congress, the national government must stand by

and do nothing for the relief of the general distress, confining its activities to matters as to which it is given legislative powers by the Constitution. It is the only instrumentality which the people of the country have which can deal adequately with an economic crisis nationwide in scope; and there can be no question but that, for the purpose of dealing with such a crisis, it can exercise the power to raise and spend money under Article 1, Section 8, Clause 1 of the Constitution which provides:

> The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States.

There has been much discussion as to the meaning of this "General Welfare" clause of the Constitution; but it is now definitely settled that the power of Congress to authorize expenditure of public money for public purposes is not limited by the direct grants of legislative power contained in the Constitution. Dealing with this question in the recent case of *United States* v. *Butler,* — U. S. —, 56 S. Ct. 312, the Supreme Court, speaking through Mr. Justice Roberts, said:

> Since the foundation of the nation sharp differences of opinion have persisted as to the true interpretation of the phrase. Madison asserted it amounted to no more than a reference to the other powers enumerated in the subsequent clauses of the same sec-

tion; that, as the United States is a government of limited and enumerated powers, the grant of power to tax and spend for the general national welfare must be confined to the enumerated legislative fields committed to the Congress. In this view the phrase is mere tautology, for taxation and appropriation are or may be necessary incidents of the exercise of any of the enumerated legislative powers. Hamilton, on the other hand, maintained the clause confers a power separate and distinct from those later enumerated, is not restricted in meaning by the grant of them, and Congress consequently has a substantive power to tax and to appropriate, limited only by the requirement that it shall be exercised to provide for the general welfare of the United States. Each contention has had the support of those whose views are entitled to weight. This court has noticed the question, but has never found it necessary to decide which is the true construction. Mr. Justice Story, in his Commentaries, espouses the Hamiltonian position. We shall not review the writings of public men and commentators or discuss the legislative practice. Study of all these leads us to conclude that the reading advocated by Mr. Justice Story is the correct one. While, therefore, the power to tax is not unlimited, its confines are set in the clause which confers it, and not in those of section 8 which bestow and define the legislative powers of the Congress. It results that the

> power of Congress to authorize expenditure of public moneys for public purposes is not limited by the direct grants of legislative power found in the Constitution.

If it be conceded, as we think it must be, that the expenditure of public funds for the relief of nation-wide unemployment is within the power of Congress, as being an expenditure in furtherance of the general welfare of the United States, we think that it necessarily follows that expenditures for a nation-wide program of public works for the purpose of providing employment in such an emergency is within the Congressional power; for from the earliest period of history nations have been accustomed to resort to the construction of public works as a means of relieving the unemployment of their people. Certainly, it is hard to imagine any expenditure which the federal government might make for the purpose of relieving the danger and distress arising from unemployment which would interfere so little with private business, and would have so little tendency to create a dependent attitude on the part of the people, as a program of public works. And, not only does such a program relieve unemployment by furnishing work in the construction of the immediate projects and in the manufacture of materials to be used therein, but it also makes a lasting contribution to the national wealth, and thus counterbalances to some extent the burden of the

increase in the national debt which it entails. If, therefore, the relief of nationwide unemployment be a legitimate end for Congress to have in view in the exercise of its power to raise and spend money under "General Welfare" clause, the construction of a nationwide program of public works would seem to be a legitimate means to that end.

And we do not think that it can be said that Congress is invading the reserved powers of the states, or is making expenditures for matters essentially local in character, merely because the project for which expenditure is made is not connected with interstate commerce and, when considered alone is local in character. It cannot be said to invade the reserved powers of a state to make loans or grants of money to municipal corporations which the state continues to control, and which are at liberty to reject the loans and grants if they see fit to do so. And a program of works for relieving nationwide unemployment does not lose its national character and become local merely because each of the public works projects is constructed in some particular locality. If this were true, the spending power under the general welfare clause would be limited, in the manner in which the Supreme Court has just held in *United States* v. *Butler* that it is not limited, to objects embraced within the direct grants of legislative power. No matter how clearly national the end to be attained by expenditures under the general welfare clause, or how appropriate

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the means adopted for the attainment of that end, each individual expenditure must needs have a local as well as a national character; for money cannot be expended in vacuo and no project can be imagined, even though part of a national program, which will not have a local situs. The national character of the program here involved is shown, however, by the fact that projects of various kinds have been commenced in 3,040 of the 3,070 counties of the country; and the magnitude of the undertaking clearly appears from the report of the Administrator to the Senate, of March 22, 1934. See Senate Document No. 167, 73rd Congress, 2nd Session; *Kansas Gas & Electric Co.* v. *City of Independence, Kan.* (C. C. A. 10th), 79 Fed. (2d) 32, 42; id. 79 Fed. (2d) 638; *Missouri Utilities Co.* v. *City of California,* 8 Fed. Supp. 454, 464; *Iowa Southern Utilities Co.* v. *Town of Lamoni,* 11 Fed. Supp. 581.

Nor do we think that the pertinent portion of the Act can be condemned as an unconstitutional delegation of legislative power within the rule laid down in *Panama Refining Co.* v. *Ryan,* 293 U. S. 388; and *L. A. Schecter Poultry Corporation* v. *United States,* 295 U. S. 495. It was out of the question for Congress to prescribe the details of an extended program of public works. It appropriated the money for the purpose, laid down the principles which were to guide the President and the Administrator of Public Works in its expenditure,

and left to them the working out of the details. The making of loans and grants in carrying out the policy thus laid down by Congress is the exercise of administrative, not legislative, discretion. As said in *Wilmington & Zanesville Railroad Co.* v. *Commissioner,* 1 Ohio St. 77, 88, and quoted with approval by the Supreme Court in *Hampton & Co.* v. *United States,* 276 U. S. 394, 407:

> The true distinction, therefore, is between the delegation of power to make the law, which necessarily involves a discretion as to what it shall be, and conferring an authority or discretion as to its execution, to be exercised under and in pursuance of the law. The first cannot be done; to the latter no valid objection can be made.

The question was fully considered by the Circuit Court of Appeals of the Tenth Circuit in *Kansas Gas & Electric Co.* v. *City of Independence,* supra; and, on the point here under consideration, we are in thorough accord with what was said by Judge Phillips in that case. He said:

> Section 202 (40 U. S. C. A. 402) lays down a standard as to the program of public works. It provides the program must be comprehensive and must include certain specified classes. Manifestly the Congress could not enumerate specifically the particular projects to be included in such a broad program.
>
> We are not called upon to decide whether the Congress could delegate to the President power to include in such program other

classes of projects than those enumerated in section 202, because the project here involved falls within a specifically enumerated class.

Sections 203 and 206 (40 U. S. C. A. 403, 406) lay down standards as to what projects may be financed or aided by loans or grants. They must be public works projects; they must be projects included in the program; they must come within the limitations specified in section 206; a loan or grant must be made with a view to increasing employment quickly, and a loan must be reasonably secured.

The making of such a loan or grant is administrative rather than legislative in character.

* * * * *

We conclude the Congress at least as to the classes of projects specifically enumerated, lays down a legislative standard and declares a legislative policy with requisite definiteness, and impliedly directs the President to effectuate the purposes of the Act and to make loans and grants, within the limits of a reasonable administrative discretion, to projects that fall within the classes enumerated in section 202 and the limitations of Sections 203 and 206, and that, while Title 2 grants broad administrative authority and discretion, it does not unconstitutionally delegate legislative power.

See also *Radio Commission* v. *Nelson Bros. Co.*, 289 U. S. 266; *Union Bridge Co.* v. *United States,*

204 U. S. 364; *United States* v. *Hanson* (C. C. A. 9th), 167 Fed. 881.

2. The Exercise of Power by the Administrator

As the statute is valid, the making of the loan and grant by the Administrator is valid if within its terms notwithstanding the motive of the Administrator in making them. As said by Judge Sibley in his concurring opinion in *Tennessee Valley Authority* v. *Ashwander* (C. C. A. 5th), 78 Fed. (2d) 578, 583, "This case is not to be decided by the purposes and plans of the Board, but by the validity of what is about to be done under the attacked contracts." See also *Spalding* v. *Dickinson,* 161 U. S. 483, 498, 499; *West* v. *Hitchcock,* 205 U. S. 80, 85, 86.

It is of course true that, as Congress may not encroach upon the reserved powers of the states, officers acting under its authority may not so encroach; and the authority of such officers in administering acts of Congress must be held to be limited by the bounds of Congressional power. The administrator, for example, could not, under the guise of carrying out the public works program, make such an expenditure of public funds as would interfere with the states in the exercise of their reserve powers. See *U. S.* v. *Butler, supra.* But we do not understand that any such thing is being done here. Greenwood County is but an agency of the state of South Carolina and remains subject to the control of that state in the management of its

power project as well as in other matters. The rates to be charged by public utilities remain subject to state control. All that the Administrator proposes to do is to make a loan and grant to the county to enable it to engage in an enterprise which, as a subdivision of the state, it has been given by the state the right and power to engage in. In other words, the Administrator's action will not in any sense limit the powers of the state but will furnish to the state means of exercising a power which it already possesses, i. e., the power of engaging in a public business for the benefit of its citizens. We are unable to see how lending or giving money to a state agency for such purpose can be said to be an encroachment on state power. It is an entirely different thing from giving or lending money to private persons for the purpose of defeating a state policy or regulating matters under state control.

The learned judge below was of opinion that the action of the Administrator should be condemned because the county would be enabled by the loan and grant to establish an enterprise which could and would charge lower rates than plaintiffs were charging and thus constitute a "yardstick" by which plaintiffs' rates would be affected. We cannot see, however, that the incidental effect which the construction of the county project may have on plaintiffs' rates has any bearing on the question. The county has the right to engage in the enter-

prise notwithstanding the effect of its competition upon the business of plaintiffs. *Puget Sound Co.* v. *Seattle*, 291 U. S. 619; *Madera Water Works* v. *Madera,* 228 U. S. 254. And notwithstanding that the loan and grant to establish the enterprise are made by the Administrator, the fact remains that the business is its business and subject to its control. If a "yardstick" is established, it is the county's yardstick subject to the control of the state, not of the federal government.

It is argued, however, that the purpose of the Administrator in making the loan and grant is to affect the rates of the plaintiffs; that the policy of the Public Works Administration is to make loans and grants in such way as to bring about a reduction in public utility rates; and that they are not made except where the rates to be charged by the municipal enterprise which is being aided will be lower than the rates of the competing private company. To support this contention plaintiffs rely upon the testimony of C. L. Rose heretofore quoted and also a press release, referred to by the judge below in his findings of fact, as well as to certain statements made by the Administrator in his recently published book entitled "Back to Work." The Administrator denies under oath, however, that his policy in making loans and grants arises out of any purpose to affect rates, and specifically that the contract here in question was made with such end in view; and we feel that we would not be

justified in disregarding the sworn testimony of a Cabinet Officer as to the policies which are being followed by him in the discharge of his official duties, and accepting instead mere press reports or the conflicting testimony of a minor official who may not have understood the purposes of his superior, who was the one charged with the formulation of policies and the exercise of discretion.

It is true that in the book of the Administrator, just as in the press release, there are statements to the effect that the Public Works Administration had endeavored in the approval of loans to make electric energy more broadly available at cheaper rates, and that it was its practice before approving loans to give private companies an opportunity to put in effect rates as low as those at which the municipal system would be self-liquidating; but it is manifest that it is only where the new municipal enterprise will be able to furnish lower rates than the competing private companies that there is reasonable hope of their securing sufficient business to be self liquidating projects. Loans to such enterprises would be unsound from an economic standpoint if they should be made in cases where the rates to be charged would be as high as those of existing enterprises or where the latter might lower their rates to such an extent that the municipal enterprises could not secure sufficient business to be self liquidating.

The fact, however, that the Administrator may or may not be furthering his ideas as to lowering power rates or encouraging municipal ownership, would seem to have no bearing on the point under consideration, if what he is doing is in fact required by a sound financial policy in the discharge of his duties under the statute; for, as stated above, his action may not be enjoined because of his motives, if he has been given the power by a valid act of Congress to do what he is doing. The discretion as to what loans and grants shall be approved has been vested in him, not in the courts; and the courts may not interfere with the exercise of that discretion because they may not approve of the reasoning upon which it is based.

It must be remembered that this is not a case where Congress is directly or indirectly attempting to regulate intrastate power rates. The aim of Congress is to relieve unemployment through a nationwide program of public works, one feature of which is loans and grants to states or municipalities to aid them in such public works as development of water power and the transmission of electrical energy. Such loans and grants cannot be made except in cases where the states or municipalities desire to undertake these public works, a matter which is left entirely to their decision; and, if the making of such loans and grants inevitably results, as has been suggested, in more abun-

dant power at lower rates, this is but the incidental effect of what the states or their agencies voluntarily decide to do. Without suggesting that this incidental effect of more abundant power at lower rates might be considered as conducive to the general welfare, we see no reason why a loan or grant to a municipality which will aid in the relief of unemployment must be condemned because of it. That the Administrator may have had such result in mind in approving loans and grants would seem to furnish no more ground for interference by the courts than the fact that a purchasing agent, for the government might have purchased a post office site, otherwise desirable, because the location harmonized with his ideas of a proper place for the post office in considering the proper development of the city. In other words, we do not think that the exercise of a discretion vested in a federal officer by a valid act of Congress may be condemned by the courts, either as transcending the power of such officer or as an abuse of discretion, merely because some consideration of what was locally desirable may have entered into its exercise.

And we think that there is no merit in the contention that the Administrator has assumed control over a local matter reserved to the jurisdiction of the states, because of the provisions of the contract as to wages, hours of labor, etc. These are stipulated by contract in advance, not left to the control of the Administrator during the progress of the

work. Had this been done, there is no reason to think that it would be violative of any provision of the laws of South Carolina. *Clarke* v. *Public Service Authority,* — S. C. —, 181 S. E. 481. But, as it was not done, we see no ground of complaint on any score. Certainly where the federal government is making a loan to aid in the relief of unemployment, it may stipulate that the loan shall be used in such way as will best accomplish that purpose.

3. Right of Plaintiffs to Injunction

For the reasons heretofore stated, the plaintiffs are not entitled to an injunction; but, even if the statute were unconstitutional or the action of the Administrator unauthorized, they would not be entitled to the injunction which they ask, for the reason that no legal right of theirs is infringed by any proposed action of the county or the Commissioner of Public Works. The county, in its proposed action, will not infringe any such right; for it is thoroughly settled that competition by a county or municipality violates no right of a public service corporation doing business therein which, as is the case of plaintiffs here, has no exclusive franchise. *Puget Sound Co.* v. *Seattle,* 291 U. S. 619; *Madera Water Works* v. *Madera,* 228 U. S. 454. The administrator will not infringe any such right in making the loan and grant to the county from funds of the United States; for it is equally well settled that no citizen or taxpayer has any such right in funds

of the government. *Frothingham* v. *Mellon,* 262 U. S. 447. In the case just cited the Supreme Court, after referring to taxpayers' suits to enjoin an illegal use of money by a municipal corporation, said:

> But the relation of a taxpayer of the United States to the Federal Government is very different. His interest in the moneys of the Treasury—partly realized from taxation and partly from other sources—is shared with millions of others; is comparatively minute and indeterminable; and the effect upon future taxation, of any payment out of the funds, so remote, fluctuating and uncertain, that no basis is afforded for an appeal to the preventive powers of a court of equity.

As the county infringes no right of plaintiffs by entering into competition with them, and as the Administrator infringes no right of theirs in making loans or grants of public funds, it would seem to follow necessarily that no such right is infringed when the Administrator makes a loan and grant to the county in order that the county may engage in competition, for the addition of negative quantities can never result in a quantity that is positive. The exact question was before the Circuit Court of Appeals of the Eighth Circuit in *Arkansas-Missouri Power Co.* v. *City of Kennett, Mo.* (C. C. A. 8th) 78 Fed. (2d) 911, and we see no answer to what was said by Judge Sanborn, speaking for the court, in that case. Said he:

The court below was of the opinion that the power company was in no position to question the power of the federal government to loan or give money to the city of Kennett. We are in accord. The United States is not proposing to become a competitor of the power company. It will have no right, title, or interest in the plant when completed and nothing to do with operating it. The destruction of the power company's property will come about by reason of the city's operation of the plant when erected. The position of the United States is that of a lender of money, a buyer of bonds, and a giver of gifts. True, the money procured from the government will enable the city to build the plant, and, if the city builds the plant, it will no doubt operate it, and when it does operate the plant the city will take the customers of the power company, and the company's property in Kennett will become worthless or greatly impaired in value. We know of no rule of law, however, which permits one indirectly hurt, no matter how seriously, by a government expenditure, to question the power of the government to make it. In fact, the rule is to the contrary. *Commonwealth of Massachusetts* v. *Mellon, Secretary of the Treasury et al.,* 262 U. S. 447, 43 S. Ct. 597, 67 L. Ed. 1078; *city of Allegan, Mich.,* v. *Consumers' Power Co.* (C. C. A. 6th), 71 Fed. (2d) 477 (certiorari denied, 293 U. S. 586, 55 S. Ct. 100, 79 L. Ed. —). It is true that in the cases cited

> the plaintiffs relied upon their status as taxpayers exclusively, while in this case the plaintiff relies, in addition, upon the injury which will be done to its property by municipal competition. That injury, however, is, so far as the government is concerned, clearly consequential and indirect, as we have pointed out. See also *Missouri Utilities Co.* v. *City of California, Mo.,* et al. (D. C., W. D. Mo.) 8 Fed. Supp. 454, 465.

Another case directly in point is the case of *City of Allegan* v. *Consumers' Power Co.* (C. C. A. 6th) 71 Fed. (2d) 477 (Certiorari denied 293 U. S. 586) referred to by Judge Sanborn in the above quotation. That case, just as the case at bar, involved a grant and loan by the Administrator to a municipal corporation to construct an electric lighting plant which would compete with a private power company. The question of the constitutionality of Title II of the National Recovery Act was raised there as it is here; and the Circuit Court of Appeals of the Sixth Circuit held that the company was "without right to raise any question either as to the effect of or the constitutionality of the recovery act" in that suit. It is true that the injury which might result from municipal competition was not discussed in the opinion; but as pointed out above this would have added nothing to plaintiff's position, for the city had a right to engage in such competition and invasion of rights cannot be predicated of competition which is rightful.

The precise question as to whether one who will be injured by the competition of another has a standing in court to protest the action of an officer of the government, alleged to be unlawful, which will enable such other to compete with him, was raised in *United States* v. *Dern* (App. D. C.) 68 Fed. (2d) 773. That was a suit for mandamus to compel the Secretary of War to cancel certain leases of warehouses which were alleged to have been made contrary to law. Plaintiffs alleged that they were engaged in direct competition with the lessee, and that, by reason of the advantageous provisions of the allegedly illegal lease agreements, the lessee was able to underbid them in competing for business. It was held, however, that this gave plaintiffs no right to challenge the legality of the action of the Secretary of War in making the leases.

Another decision very much in point is *Railroad Co.* v. *Ellerman* 105 U. S. 166, wherein it was held that a right to question as ultra vires the acts of a railroad corporation did not arise because, as a result of these acts, competition for the business of complainant was created. The court said:

> The only injury of which he can be heard in a judicial tribunal to complain is the invasion of some legal or equitable right. If he asserts that the competition of the railroad company damages him, the answer is, that it does not abridge or impair any such right. If he alleges that the railroad com-

> pany is acting beyond the warrant of the law, the answer is, that a violation of its charter does not of itself injuriously affect any of his rights.

Applying this language to the case at bar, the only injury of which plaintiffs can be heard in a judicial tribunal to complain is the invasion of some legal or equitable right. If they assert that the competition of the county will damage them, the answer is that it will not abridge or impair any such right. If they allege that the Administrator, in making the loan and grant, is acting beyond the warrant of the law, the answer is that such action does not of itself injuriously affect any of their rights.

The two cases upon which plaintiffs particularly reply with respect to their right to sue are *Pierce* v. *Society of Sisters,* 268 U. S. 510, and *Frost* v. *Corporation Commission,* 278 U. S. 515; but what has already been said is sufficient to distinguish both of these. In the *Pierce case,* a state statute, by requiring parents to send their children to public schools, threatened the destruction of the business of a private school by reason of the unlawful coercion exercised on its patrons. The injury threatened was, not from lawful competition, but from unlawful coercion of patrons; and this was what was enjoined. Here the only injury to plaintiffs that can arise is from the competition of the county, which is lawful. In the *Frost case,* the plaintiff was the holder of a license to operate a

cotton gin which the court held to be exclusive as against person not similarly licensed. The legislature attempted to grant a privilege to cooperative societies which was held void because violative of the equal protection clause of the 14th Amendment. It was held that the plaintiff was entitled to enjoin one who attempted to operate in competition with him under a void permit issued under the unconstitutional statute. The court said that the holder of a valid license might "resort to a court of equity to restrain the illegal operation upon the ground that such operation is an injurious invasion of his property right." Here the operation of a power plant by the county is not illegal, and plaintiff has no right to exclude the county from any competition upon which it may see fit to enter.

To conclude, we think: (1) that the loan and grant which the Administrator of Public Works proposes to Greenwood County cannot be condemned either on the ground that the Act of Congress under which they will be made is unconstitutional or that the Administrator in making them will exceed his powers under the act; and (2) that, even if this were not true, no right of plaintiffs would be invaded either by the county in the building of the power project or by the Administrator in the making of the loan and grant. In a similar case, the Circuit Court of Appeals of the Tenth Circuit, in *Kansas Gas & Electric Co.* v. *City of Inde-*

pendence, (C. C. A. 10th) 79 Fed. (2d) ——, denied relief on the first of these grounds Circuit Court of Appeals of the Sixth and Eighth Circuits in *City of Allegan* v. *Consumers' Power Co.* (C. C. A. 6th) 71 Fed. (2d) 477, and *Arkansas-Missouri Power Co.* v. *City of Trenton* (C. C. A. 8th) 78 Fed. (2d) 911, 914, 924, denied relief on the second ground.

The question arises whether there should be a dismissal on the merits or for lack of jurisdiction. While the second ground above mentioned is frequently treated as going to the question of jurisdiction, it really goes to the right of plaintiff to relief rather than to the jurisdiction of the court to afford relief in a proper case. In addition to this, the pleadings ask relief, which as we have seen was properly denied, on grounds other than the unconstitutionality of the statute and lack of authority in the Administrator; and, as there was diversity of citizenship, the court had jurisdiction to pass on these matters. We think, therefore, that the decree appealed from should be reversed and that the lower court should be directed to dismiss the bill for lack of equity.

Reversed.

Soper, *Circuit Judge,* Dissenting: When the Federal Emergency Administrator of Public Works in the exercise of his authority under the statute decided to make the loan and grant to Greenwood County, S. C., to be used in the construction of a hydroelectric plant on the Saluda

River, he intended not merely to effectuate the purpose of Title II of the Act to increase employment quickly, but also to reduce the cost of electric energy to the local community. The evidence shows quite clearly that he held the opinion that public utility companies have charged exorbitant prices, and that in particular the Duke Power Company and its subsidiary have exacted unreasonable rates; and that in order to bring down the rates for the benefit of the consumers it was desirable and proper that a portion of the great sum of money within his control should be used to establish municipal power projects in competition with privately owned public utilities.

When his authorized publications are considered it is difficult to reach any other conclusion. Thus in a press release of the Federal Emergency Administration of Public Works (P. W. A.) of September 24, 1934, he said:

> P. W. A. has endeavored to make electric energy more broadly available at cheaper rates by acting on applications of municipalities for loans and grants to finance municipal systems where reasonable security is offered and the project is socially desirable. They are deemed desirable where the loan can be amortized in a reasonable period while charging rates substantially lower than those of the existing utility.
>
> However, we make it a practice before approving the loan to give the company an opportunity to put in effect rates at least as

low as those at which the municipal system will be self-liquidating. Several utility companies have accepted this opportunity. It is obvious that in such cases it is advantageous to the city and to P. W. A. that the offer be accepted and the application withdrawn. To make loans and grants to finance projects where the competitor offers rates which are lower than those possible by the city plant, would duplicate facilities without any social betterment and impose on the city a burden which it probably could not meet without resort to taxation.

Furthermore, in the described situation Public Works will be free to use its funds to better advantage elsewhere. The action of the utility companies referred to supports the belief that domestic rates, in certain instances at least, are so high as to be disadvantageous to the company as well as unjust to the consumers. Experience shows that lower rates may produce larger profits particularly where promotional campaigns are conducted and the cost of electrical appliances is made reasonable.

P. W. A. will cooperate with cities to prevent rates rising on an indication municipal plants may not be built. P. W. A. will not rescind allotments or suggest the withdrawal of application until the lowered rates are legally in effect.

State laws authorize municipal competition, hence it is P. W. A.'s position that the state has determined that such competition may be socially desirable. We believe it is

> for the municipal applicant to determine whether or not it desires to compete with privately owned utilities. It is our policy to consider such applications particularly where franchises are soon to expire, provided the project is self-liquidating at rates lower than those which the existing utility is willing to put into effect.

In his testimony given in the pending case on December 21, 1935, the Administrator did not repudiate this statement but said that it was not a correct statement standing alone and must be understood as corrected by his testimony. A more detailed expression of his purposes as Administrator and his views upon the practices of public utility companies in general and of the Duke Power Company in particular is found in his story of P. W. A. told in his book Back to Work, May 16, 1935, chapter VI, cheap power, pp. 122 to 147, wherein reference to the Greenwood County project is made. He shows how the great federal power projects, such as Boulder Dam on the Colorado River, are the beginnings of a national plan designed to increase the supply of electric power and diminish its cost, and thus to put it within the reach of the under-privileged for many uses and raise the standard of living in their homes. With respect to municipal power projects established under P. W. A. he has this to say:

> By January of 1935, twelve municipal power projects had been completed. Forty-eight others were under construction; thirty-

four more had been approved by the power board, and about seventy-one were under consideration. The total amount allotted at that time for this purpose was $48,784,300.

One of the most important accomplishments of P. W. A., although an indirect one, has been a saving to consumers of millions of dollars through the lowering of rates by the private utilities to meet the charges proposed by applicants for public power projects. The rejection or withdrawal of some of the 200 applications that P. W. A. did not approve was the result of this reduction of rates by the private companies to a point where there seemed no necessity or justification for a municipal plant.

These "yardsticks" provided by both municipal and federal enterprises are so valuable that they alone would warrant P. W. A.'s expenditures for power undertakings. The municipal projects have caused private utilities to adjust their rates downward in wide areas and the federal projects have brought about rate adjustments over still larger expanses of territory.

How are these formal statements modified by his present testimony? To the extent that the government is interested in the rates to be charged by the county only as a bondholder and does not intend to exercise any control over them. He added that the loan and grant would have been made regardless of the rates of the Duke Power Company, if it were established that the county had legal authority to

make the contract and that the loan would be liquidated; but as this statement enters the realm of conjecture it adds little to the discussion.

One is presumed to intend the natural and probable consequences of his acts; and the public utterances of the Administrator show beyond possibility of debate that he realized that his loans and grants to municipal power projects would reduce local utility rates. The reduction of rates under the plan of P. W. A. in this case is not merely probable, it is inevitable. The municipality makes no investment and assumes no liability for the loan, for that is to be represented by revenue bonds payable only out of income of the plant. In addition 30% of the cost of the project is a free gift. We have thus to consider not merely the influence of a competitor who risks his own money in the enterprise. Competition from such a source the local utility company must endure without complaint. The fact is that the county, if not dowered with a free gift with which to build a plant, is at least given the unrestricted power to cut the rates, and must do so in order to secure the business and satisfy the demands of its citizens.

We may lay to one side the protests of the Power Company that the state authorities have found the rates of this intrastate industry to be fair and reasonable and the charges of the Administrator that the rates are exorbitant. The question is, has the federal government the constitutional right to

exert this regulatory power in a local field on the ground that it is only an incidental result of the laudable effort under the general welfare clause of the Constitution to put an end to unemployment. The conflict between state and federal power which arises is similar to that which the Supreme Court resolved in *U. S.* v. *Butler* in which it held that a statutory plan to regulate and control agricultural production effected by contracts between the government and the farmers was beyond its power and invaded the reserved rights of the states. The principle underlying that decision seems to control this case, and the factual differences between them do not appear to be material. The present contract does not in turn obligate the municipality to reduce the rates with the same directness as the farmers' contracts required to curtail production, but as a result of the P. W. A. contract the rates are bound to be reduced as we have seen. Moreover an element of coercion enters into the indirect reduction of the rates by the Power Company, which bears some analogy to the virtual compulsion under which the farmers' contracts were signed. The party to the present contract with the government is not a private citizen, but a municipality or agency of the state which consents to the invasion of the state's domain; but, it is submitted that the state no more than the individual may be induced by gift to break down the barriers which confine the federal government within con-

stitutional limits. In *U. S.* v. *Butler* the Court said:

> But it is said that there is a wide difference in another respect, between compulsory regulation of the local affairs of a state's citizens and the mere making of a contract relating to their conduct; that, if any state objects, it may declare the contract void and thus prevent those under the state's jurisdiction from complying with its terms. The argument is plainly fallacious. The United States can make the contract only if the federal power to tax and to appropriate reaches the subject matter of the contract. If this does reach the subject matter, its exertion cannot be displaced by state action. To say otherwise is to deny the supremacy of the laws of the United States; to make them subordinate to those of a State. This would reverse the cardinal principle embodied in the Constitution and subsitute one which declares that Congress may only effectively legislate as to matters within federal competence when the States do not dissent.

The conclusion is that Title II of the statute is invalid so far as it may be interpreted to authorize the making of such a contract as we have here; and that the action of the Administrator herein is beyond the scope of the power which may be conferred by Congress upon an officer of the federal government.

The power company has such an interest in the business as to justify its suit. The practical effect upon its valuable property interests is manifest. It has an interest far more weighty than that of a federal taxpayer, which is *Frothingham* v. *Mellon,* 262 U. S. 447, which was held to be too remote, uncertain and insignificant to entitle him to injunctive relief against an invalid federal appropriation. The plaintiffs here conform to the rule laid down in that case since they show not only that the act of the Administrator was invalid, but that they are in danger of sustaining a direct and substantial injury therefrom.

3. REMAND ORDER OF CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT

United States Circuit Court of Appeals for the Fourth Circuit

No. 3971

GREENWOOD COUNTY AND E. L. BROOKS, S. A. AGNEW, AND E. L. DAVIS, MEMBERS OF AND CONSTITUTING THE FINANCE BOARD OF GREENWOOD COUNTY, AND HAROLD L. ICKES, AS FEDERAL EMERGENCY ADMINISTRATOR OF PUBLIC WORKS, APPELLANTS,

versus

DUKE POWER COMPANY AND SOUTHERN PUBLIC UTILITIES COMPANY, APPELLEES

Order

The above-entitled cause coming on to be heard on the motion of Harold L. Ickes, Federal Emergency Administrator of Public Works, one of the appellants, that the said cause be remanded to the District Court for the Western District of South Carolina to the end that that court may reconsider its decision in the light of the contract entered into between the United States and the County of Greenwood, South Carolina, dated November 30, 1935:

It is ordered that said cause be remanded to the said District Court to the end that that court may reconsider its decision in the light of the said con-

tract and may take such further action as may be appropriate in the premises.

The court below is requested to hear the cause thus remanded with all convenient dispatch and to certify his findings of fact and conclusions of law to this court as soon as possible, to the end that the cause may be heard by this court upon appeal on the first Monday in January 1936, in accordance with the agreement of counsel this day made in open court to the effect that they would press for a speedy hearing of the cause and docket the appeal from the decision of the court below for hearing on the date aforesaid without reference to the rules regulating appeals, filing and printing briefs, etc. Let mandate issue forthwith.

This, the 5th day of December 1935.

(S.) JOHN J. PARKER,
Senior Circuit Judge.

A true copy.

Teste:

CLAUDE M. DEAN,
Clerk, U. S. Circuit Court of Appeals, Fourth Circuit.

4. REMAND ORDER OF CIRCUIT COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA IN THE ALABAMA POWER CASE

United States Court of Appeals for the District of Columbia

No. 6583

ALABAMA POWER COMPANY, APPELLANT

v.

HAROLD L. ICKES, ADMINISTRATOR OF THE FEDERAL EMERGENCY ADMINISTRATION OF PUBLIC WORKS, ET AL., APPELLEES

Upon consideration of the motion of appellees that the above entitled cause be remanded to the Supreme Court of the District of Columbia in order that the pleadings may be reformed, it is, this 19th day of December, 1935, *Ordered* that the cause be remanded to the Supreme Court of the District of Columbia with directions to set aside forthwith the final decree entered by that court dismissing the bill, but with leave to the defendants (appellees here) to file any further pleadings or to supplement and amend their present pleadings within ten days, and likewise with leave to the plaintiff (appellant herein) to amend or supplement its bill of complaint within ten days thereafter; and that the parties shall then apply to the Supreme Court of the District of Columbia for an immediate trial on the merits.

Further ordered, by agreement and stipulation of the parties, that the injunction entered by the Supreme Court of the District of Columbia in this cause, and now in effect, shall continue in effect until the further order of this court.

Attest:

GEORGE E. MARTIN,
Chief Justice.

A true Copy.

Test:

HENRY W. HODGES,
Clerk of the United States Court of Appeals for the District of Columbia.

5. OPINION OF CIRCUIT COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

United States Court of Appeals for the District of Columbia

No. 6580

ALABAMA POWER COMPANY, APPELLANT

v.

HAROLD L. ICKES, ADMINISTRATOR OF THE FEDERAL EMERGENCY ADMINISTRATION OF PUBLIC WORKS; ET AL., APPELLEES

PER CURIAM: Appellees move this court to remand this cause to the Supreme Court of the District of Columbia with leave to the parties to amend their pleadings. The ground of the motion is that after the decree was entered in this cause in the Supreme Court of the District, and while the cause was pending on appeal, the Administrator of Public Works on December 2, 1935, entered into an agreement with the City of Sheffield, Alabama, and with other Alabama municipalities, with whom similar agreements had been made, terminating the former agreement relating to the subject matter of the suit; that subsequently on December 4, 1935, the Administrator entered into a new agreement with the City of Sheffield and with other Alabama municipalities, copies of which are filed with the motion.

We set the motion for hearing and have heard argument of counsel for and against the granting of the motion. We think we have the power to grant the motion if it should appear to be proper to do so. After consideration, we have concluded to grant the motion on the terms made part of our order.

The exhibits filed with the motion unmistakably show that the agreement between the Administrator of Public Works and the municipalities involved is essentially different from the agreement which the bill of complaint prayed should be enjoined. To ignore the situation thus brought about and to proceed to hear the cause on the present record would, as we think, be to do a futile act. The agreement which the bill of complaint sought to restrain the performance of, admittedly is not the agreement now in effect, and the conclusion of this court as to the validity or invalidity of that agreement would not be decisive of the validity or invalidity of the agreement which has now been made and substituted in its place. Nor would it settle the controversy.

The lower court issued a preliminary injunction on the filing of the bill and, nothwithstanding it subsequently sustained a motion to dismiss the bill, retained the injunction in full force and effect. As our order on this motion will further continue the injunction order until the case is again brought here on appeal and is decided by us, or otherwise

finally disposed of to the satisfaction of all parties, appellant will be fully protected; and the court below and this court, by the granting of the motion, will have the opportunity and the duty of deciding an existing, rather than a moot, controversy.

A true Copy.

Test:

HENRY W. HODGES,
Clerk, of the United States Court of Appeals for the District of Columbia.

54605—36——5

6. OLD CONTRACT BETWEEN P. W. A. AND GREENWOOD COUNTY

LOAN AND GRANT AGREEMENT
BETWEEN THE
COUNTY OF GREENWOOD,
SOUTH CAROLINA,
AND THE
UNITED STATES OF AMERICA

P. W. A. Docket No. 3972

Part 1

1. *Purpose of Agreement.*—Subject to the terms and conditions of this Agreement, the United States of America (herein called the "Government") will, by loan and grant not exceeding in the aggregate the sum of $2,852,000 (herein called the "Allotment"), aid the County of Greenwood, South Carolina (herein called the "Borrower"), in financing a project (herein called the "Project"), consisting substantially of constructing a hydro-electric plant comprising an earthen dam across the Saluda River, a 15,000 K. W. Generating Station with necessary control equipment, transmission lines, and rural distribution all pursuant to the Borrower's application (herein called the "Application"), P. W. A. Docket No. 3972, Title II of the National Industrial Recovery Act (herein called the "Act")

and the Constitution and Statutes of the State of South Carolina (herein called the "State").

2. *Amount and Method of Making Loan.*—The Borrower will sell and the Government will buy, at the principal amount thereof plus accrued interest, $2,284,000 aggregate principal amount of negotiable coupon bonds (herein called the "Bonds") of the description outlined below or such other description as may be satisfactory to the Borrower and to the Administrator, bearing interest at the rate of 4 percent per annum, payable semi-annually from date until maturity, less such amount of the Bonds, if any, as the Borrower may sell to purchasers other than the Government.

(a) *Date.*—October 1, 1934.

(b) *Denomination.*—$1,000.

(c) *Place of Payment.*—At the office of the Treasurer of the Borrower in the City of Greenwood, South Carolina or, at the option of the holder, at the office of the fiscal agent of the Borrower in the Borough of Manhattan, City and State of New York.

(d) *Registration Privileges.*—Registerable at the option of the holder as to principal only.

(e) *Maturities.*—Payable, without option of prior redemption, on the first day of October in years and amounts as follows:

Year:	Amount	Year:	Amount
1936	$50,000	1949	$95,000
1937	55,000	1950	95,000
1938	60,000	1951	100,000
1939	65,000	1952	105,000
1940	70,000	1953	110,000
1941	70,000	1954	115,000
1942	75,000	1955	115,000
1943	75,000	1956	115,000
1944	75,000	1957	120,000
1945	80,000	1958	125,000
1946	85,000	1959	125,000
1947	90,000	1960	124,000
1948	90,000		

(f) *Security.*—Special obligations of the Borrower, payable solely from and secured by the pledge of, and first lien on a fixed amount of the gross revenues derived from the operation of the entire hydro-electric power generating transmission and distribution system, which fixed amount shall be sufficient at all times to pay the principal of and interest on the Bonds as and when the same become due and payable, and additionally secured by a statutory lien upon the system and any extensions or appurtenances thereto.

3. *Amount and Method of Making Grant.*—The Government will make and the Borrower will accept, whether or not any or all of the Bonds are sold to purchasers other than the Government, a grant (herein called the "Grant") in an amount equal to 30 per centum of the cost of the labor and materials employed upon the Project. The determination by the Federal Emergency Administrator of Public Works (herein called the "Administrator") of the cost of the labor and materials

employed upon the Project shall be conclusive. The Government will make part of the Grant by payment of money and the remainder of the Grant by cancellation of Bonds or interest coupons or both. If all of the bonds are sold to purchasers other than the Government, the Government will make the entire Grant by payment of money. In no event shall the Grant, whether made partly by payment of money and partly by cancellation, or wholly by payment of money, be in excess of $682,000.

4. *Bond Proceedings.*—When the Agreement has been executed, the Borrower (unless it has already done so) shall promptly take all proceedings necessary for the authorization and issuance of the Bonds.

5. *Bond and Grant Requisitions.*—From time to time after the execution of this Agreement the Borrower shall file a requisition with the Government requesting the Government to take up and pay for Bonds or to make a payment on account of the Grant. Each requisition shall be accompanied by such documents as may be requested by the Administrator (a requisition together with such documents being herein collectively called a "Requisition").

6. *Bond Purchases.*—If a Requisition requesting the Government to take up and pay for Bonds is satisfactory in form and substance to the Administrator, the Government, within a reasonable time

after the receipt of such Requisition, will take up and pay for Bonds, having maturities satisfactory to the Administrator, in such amount as will provide, in the judgment of the Administrator, sufficient funds for the construction of the Project for a reasonable period. Payment for such Bonds shall be made at a Federal Reserve Bank to be designated by the Administrator or at such other place or places as the Administrator may designate, against delivery by the Borrower of such Bonds, having all unmatured interest coupons attached thereto, together with such documents as may be requested by the Administrator. The Government shall be under no obligation to take up and pay for Bonds beyond the amount which in the judgment of the Administrator is needed by the Borrower to complete the Project.

7. *Grant by Payment of Money.*—If a Requisition requesting the Government to make a payment on account of the Grant is satisfactory in form and substance to the Administrator, the Government will pay to the Borrower at such place or places as the Administrator may designate against delivery by the Borrower of its receipt therefor, a sum of money equal to the difference between the aggregate amount previously paid on account of the Grant, and (*a*) 25 per centum of the cost of the labor and materials shown in the Requisition to have been employed upon the Project if the Requisition shows that the Project has not been com-

pleted, or (*b*) 30 per centum of the cost of such labor and materials if the Requisition shows that the Project has been completed and that all costs incurred in connection therewith have been determined; provided, however, that the part of the Grant made by payment of money to the Borrower shall not be in excess of the difference between the Allotment and the amount paid (not including the amount paid as accrued interest) for the Bonds taken up by the Government. The Government reserves the right to make any part of the Grant by cancellation of Bonds or interest coupons or both rather than by payment of money if, in the judgment of the Administrator, the Borrower does not need the money to pay costs incurred in connection with the construction of the Project.

8. *Grant by Cancellation of Bonds.*—If the Borrower, within a reasonable time after the completion of the Project, shall have filed a Requisition, satisfactory in form and substance to the Administrator, then the Government will cancel such Bonds and interest coupons as may be selected by the Administrator in an aggregate amount equal (as nearly as may be) to the difference between 30 per centum of the cost of the labor and materials employed upon the Project and the part of the Grant made by payment of money. The Government will hold Bonds or interest coupons for such reasonable time in an amount sufficient to permit compliance with provisions of this Paragraph, unless payment

of such difference shall have been otherwise provided for by the Government.

9. *Grant Advances.*—At any time after the execution of this Agreement the Government may, upon request of the Borrower, if in the judgment of the Administrator the circumstances so warrant, make advances to the Borrower on account of the Grant, but such advances shall not be in excess of 30 per centum of the cost of the labor and materials to be employed upon the Project, as estimated by the Administrator.

10. *Deposit of Bond Proceeds and Grant; Bond Fund; Construction Accounts.*—The Borrower shall deposit all accrued interest which it receives from the sale of the Bonds at the time of the payment therefor and any payment on account of the Grant which may be made under the provisions of Paragraph 8, Part 1, hereof, into an interest and bond retirement fund account (herein called the "Bond Fund") promptly upon the receipt of such accrued interest or such payment on account of the Grant. It will deposit the remaining proceeds from the sale of the Bonds (whether such Bonds are sold to the Government or other purchasers) and the part of the Grant made by payment of money under the provisions of Paragraph 7, Part 1, hereof, promptly upon the receipt of such proceeds or payments in a separate account or accounts (each of such separate accounts herein called a "Construction Account"), in a bank or banks

which are members of the Federal Reserve System and of the Federal Deposit Insurance Corporation and which shall be satisfactory at all times to the Administrator.

10 (a). *Funds from Sale of Timber.*—Funds received from sale of timber cleared from submerged land shall be paid into the Bond Fund or into the Construction Account at the election of the Administrator.

11. *Disbursement of Monies in Construction Accounts and in Bond Fund.*—The Borrower shall expend the monies in a Construction Account only for such purposes as shall have been previously specified in Requisitions filed with the Government and as shall have been approved by the Administrator. Any monies remaining unexpended in any Construction Account after the completion of the Project which are not required to meet obligations incurred in connection with the construction of the Project shall either be paid into the Bond Fund, or said monies shall be used for the purchase of such of the Bonds as are then outstanding at a price not exceeding the principal amount thereof plus accrued interest. Any Bonds so purchased shall be cancelled and no additional Bonds shall be issued in lieu thereof. The monies in the Bond Fund shall be used solely for the purpose of paying interest on and principal of the Bonds.

12. *Other Financial Aid from the Government.*—If the Borrower shall receive any funds (other

than those received under this Agreement) directly or indirectly from the Government, or any agency or instrumentality thereof, to aid in financing the construction of the Project, to the extent that such funds are so received the Grant shall be reduced, and to the extent that such funds so received exceed the part of the Grant which would otherwise be made by payment of money, the aggregate principal amounts of Bonds to be purchased by the Government shall be reduced.

13. *Construction of Project.*—Not later than upon the receipt by it of the first Bond payment, the Borrower will commence or cause to be commenced the construction of the Project, and the Borrower will thereafter continue such construction or cause it to be continued to completion with all practicable dispatch, in an efficient and economical manner, at a reasonable cost and in accordance with the provisions of this Agreement, plans, drawings, specifications and construction contracts which shall be satisfactory to the Administrator, and under such engineering supervision and inspection as the Administrator may require. Except with the written consent of the Administrator, no materials or equipment for the Project shall be purchased by the Borrower subject to any chattel mortgage, or any conditional sale or title retention agreement; provided, that nothing contained in this section shall be construed as imposing a liability of any character upon the general credit and taxing power of Greenwood County.

13. (a). *Transmission Line.*—All transmission lines, wish-bone cross-arms, used by the applicant shall be of welded galvanized steel and not of creosoted timber and, in the event that telephone cables be added to 44 K. B. lines, instantaneous, not inverse, time limit relays shall be used on generator panels.

14. *Information.*—During the construction of the Project the Borrower will furnish to the Government all such information and data as the Administrator may request as to the construction, cost and progress of the work. The Borrower will furnish to the Government and to any purchaser from the Government of 25 per centum of the Bonds, such financial statements and other information and data relating to the Borrower as the Administrator or any such purchaser may at any time reasonably require.

15. *Representations and Warranties.*—The Borrower represents and warrants as follows:

(a) *Financial Condition.*—The character of the assets and the financial condition of the Borrower are as favorable as at the date of the Borrower's most recent financial statement, furnished to the Government as a part of the Application, and there have been no changes in the character of such assets or in such financial condition except such changes as are necessary and incidental to the ordinary and usual conduct of the Borrower's affairs;

(b) *Fees and Commissions.*—It has not and does

not intend to pay any bonus, fee or commission in order to secure the loan or grant hereunder;

(c) *Affirmation.*—Every statement contained in this Agreement, in the Application, and in any supplement thereto or amendment thereof, and in any other document submitted to the Government is correct and complete, and no relevant fact materially affecting the Bonds, the security therefor, the Grant or the Project, or the obligations of the Borrower under this Agreement has been omitted therefrom.

16. *Bond Circular.*—The Borrower will furnish all such information in proper form for the preparation of a Bond Circular and will take all such steps as the Government or any purchaser or purchasers from the Government of not less than 25 per centum of the Bonds may reasonably request to aid in the sale by the Government of such purchaser or purchasers of any or all of the Bonds.

17. *Expenses.*—The Government shall be under no obligation to pay any costs, charges, or expenses incident to compliance with any of the duties or obligations of the Borrower under this Agreement including, without limiting the generality of the foregoing, the cost of preparing, executing, and delivering the Bonds, and any legal, engineering, and accounting costs, charges, or expenses incurred by the Borrower.

18. *Waiver.*—Any provision of this Agreement may be waived or amended with the consent of the

Borrower and the written approval of the Administrator, without the execution of a new or supplemental agreement.

19. *Interest of Member of Congress.*—No member of or Delegate to the Congress of the United States of America shall be admitted to any share or part of this Agreement, or to any benefit to arise thereupon.

20. *Validation.*—The Borrower hereby covenants that it will institute, prosecute, and carry to completion in so far as it may be within the power of the Borrower, any and all acts and things to be performed or done to secure the enactment of legislation or to accomplish such other proceedings, judicial or otherwise, as may be necessary, appropriate, or advisable to empower the Borrower to issue the Bonds and to remedy any defects, illegalities, and irregularities in the proceedings of the Borrower relative to the issuance of the Bonds and to validate the same after the issuance thereof to the Government, if in the judgment of the Administrator such action may be deemed necessary, appropriate, or advisable. The Borrower further covenants that it will procure and furnish to the Government, as a condition precedent to the Government's obligations hereunder, a letter from the Governor of the State stating that if in the judgment of the Administrator it may be advisable to enact legislation to empower the Borrower to issue the Bonds or to remedy any defects, illegalities, or

irregularities in the proceedings of the Borrower relative to the issuance thereof or to validate the same, said Governor will recommend and cooperate in the enactment of such legislation.

21. *Naming of Project.*—The Project shall never be named except with the written consent of the Administrator.

22. *Undue Delay by the Borrower.*—If in the opinion of the Administrator, which shall be conclusive, the Borrower shall delay for an unreasonable time in carrying out any of the duties or obligations to be performed by it under the terms of this Agreement, the Administrator may cancel this Agreement.

23. *Conditions Precedent to the Government's Obligations.*—The Government shall be under no obligation to pay for any of the Bonds or to make any Grant:

(a) *Financial Condition and Budget.*—If, in the judgment of the Administrator, the financial condition of the Borrower shall have changed unfavorably in a material degree from its condition as theretofore represented to the Government, or the Borrower shall have failed to balance its budget satisfactorily or shall have failed to take action reasonably designed to bring the ordinary current expenditures of the Borrower within the prudently estimated revenues thereof;

(b) *Cost of Project.*—If the Administrator shall not be satisfied that the Borrower will be able to

complete the Project for the sum of $2,852,000, or that the Borrower will be able to obtain, in a manner satisfactory to the Administrator, any additional funds which the Administrator shall estimate to be necessary to complete the Project;

(c) *Compliance.*—If the Administrator shall not be satisfied that the Borrower has complied with all the provisions contained in this Agreement or in the proceedings authorizing the issuance of the Bonds, theretofore to be complied with by the Borrower;

(d) *Legal Matters.*—If the Administrator shall not be satisfied as to all legal matters and proceedings affecting the Bonds, the security therefor, or the construction of the Project;

(e) *Representations.*—If any representation made by the Borrower in this Agreement or in the Application or in any supplement thereto or amendment thereof, or in any document submitted to the Government by the Borrower shall be found by the Administrator to be incorrect or incomplete in any material respect;

(f) *Maturity of Bonds Sold to Government.*—If, in the event that some of the Bonds are sold to purchasers other than the Government, the maturities of the remaining Bonds are not satisfactory to the Administrator;

(g) *Litigation.*—If the Administrator shall not be satisfied that all pending litigation or litigations hereafter instituted has been so adjudicated that

the validity of the bonds, the security offered, the construction and operation of the project have not been adversely affected.

(h) *Licenses.*—If the Administrator shall not be satisified that the Borrower has obtained the necessary permit and/or license from the Federal Power Commission and such other permits and licenses as may be necessary to construct and operate the project.

(i) *Rate Resolution and Bond Resolution.*—If the Borrower shall not have adopted a resolution satisfactory in form and substance to the Administrator, providing for rates to be charged for services afforded by the hydro-electric system, and shall not have adopted a resolution, satisfactory in form and substance to the Administrator, authorizing the issuance of the Bonds.

(j) *Specifications and Contracts.*—If the specifications of materials to be used in the Construction of the Project and the bids and/or contracts entered into between the Borrower and contractors shall not be satisfactory in form and substance to the Administrator.

(k) *Contract for sale of electric current.*—If the Borrower shall not have obtained legal contracts with municipalities, corporations, or other consumers for the sale of current and power, which contracts shall be satisfactory to the Administrator as to form, substance, and aggregate amount of current to be sold under such contracts, which con-

tracts shall be for a period of at least five years providing for the sale of at least twenty-five million kw.-hrs. per year of firm power at an average annual rate of not less than 7.6 mills per kw.-hr. and for the sale of approximately 5,000,000 kw.-hrs. per year of secondary power at approximately 5 mills per kw.-hr., or the Borrower shall obtain contracts, or submit evidence, satisfactory to the Administrator that the Borrower will sell a sufficient amount of kw.-hours as will in the opinion of the Administrator produce the equivalent total revenues.

24. *Special Covenant—Rural Telephone Distribution Lines.*—In the event that the applicant shall permit the use of the radial rural distribution line for a telephone system, a rate of not less than $1.00 per subscriber per year shall be charged for this service.

Part 2

In consideration of the grant, the borrower covenants that:

1. *Construction Work.*—All work on the Project shall be done subject to the rules and regulations adopted by the Administrator to carry out the purposes and control the administration of the Act. The following rules and regulations as set out in Bulletin No. 2, Non-Federal Projects revised March 3, 1934, entitled "P. W. A. Requirements as to Bids, Contractors' Bonds, and Contract, Wage, and Labor Provisions and General Instructions as to Applications and Loans and

GRANTS", with all blank spaces filled in as provided in said Bulletin, shall be incorporated verbatim in *all construction contracts* for work on the Project. (Particular care should be taken that in all such construction contracts *the following words* are inserted in the blank space in Paragraph 3 (a) (1): "County of Greenwood and/or the County of Newberry, and/or the County of Laurens" and *the following words* are inserted in the blank space in Paragraph 3 (a) (2): "State of South Carolina").

1. (a) *Convict labor.*—No convict labor shall be employed on the project, and no materials manufactured or produced by convict labor shall be used on the project.

(b) *Thirty-hour week.*—Except in executive, administrative, and supervisory positions, so far as practicable and feasible in the judgment of the Government engineer, no individual directly employed on the project shall be permitted to work more than 8 hours in any 1 day nor more than 30 hours in any 1 week: *Provided,* That this clause shall be construed to permit working time lost because of inclement weather or unavoidable delays in any 1 week to be made up in the succeeding 20 days.

(c) No work shall be permitted on Sundays or legal holidays except in cases of emergency.

2. *Wages.*—(a) All employees directly employed on this work shall be paid just and reasonable wages which shall be compensa-

tion sufficient to provide for the hours of labor as limited, a standard of living in decency and comfort. Such wages shall in no event be less than the minimum hourly wage rates for skilled and unskilled labor prescribed by the Administrator for the zone or zones in which the work is to be done, viz:

Skilled labor_____
Unskilled labor_____

(b) In the event that the prevailing hourly rates prescribed under collective agreements or understandings between organized labor and employers in effect on April 30, 1933, shall be above the minimum rates specified above, such agreed wage rates shall apply: *Provided,* That such agreed wage rates shall be effective for the period of this contract, but not to exceed 12 months from the date of the contract.

(c) The above designated minimum rates are not to be used in discriminating against assistants, helpers, apprentices, and serving laborers who work and serve skilled journeymen mechanics and who are not to be termed as "unskilled laborers."

(d) The provisions of this contract relating to hours and minimum wage rates for labor directly employed on the project shall for the purposes of this contract, to the extent applicable, supersede the terms of any code adopted under Title I of the act permitting longer hours or lower minimum wage rates.

(e) All employees shall be paid in full not less often than once each week and in lawful money of the United States, unless otherwise permitted by the Government engineer, in the full amount accrued to each individual at the time of closing of the pay roll, which shall be at the latest date practicable prior to the date of payment, and there shall be no deductions or rebates on account of goods purchased, rent, or other obligations, but such obligations shall be subject to collection only by legal process: *Provided, however,* That this clause shall not be construed to prohibit the making of deductions for premiums for compensation and medical aid insurance, in such amounts as are authorized by the laws of South Carolina to be paid by employees, in those cases in which, after the making of the deductions, the wage rates will not be lower than the minimum wage rates herein established.

(f) A clearly legible statement of all wage rates to be paid the several classes of labor employed on the work, together with a statement of the deductions therefrom for premiums for workmen's compensation and/or medical aid insurance authorized by the laws of South Carolina, should such deductions be made, shall be posted in a prominent and easily accessible place at the site of the work, and there shall be kept a true and accurate record of the hours worked by and the wages, exclusive of all authorized deductions, paid to each employee, and the engineer inspector

shall be furnished with a sworn statement thereof on demand.

(g) The Board of Labor Review (herein called the "Board") shall hear all labor issue arising under the operation of this contract and such issues as may result from fundamental changes in economic conditions during the life of this contract.

(h) The minimum wage rates herein established shall be subject to change by the Administrator on recommendation of the Board. In the event that, as a result of fundamental changes in economic conditions, the Administrator, acting on such recommendation, from time to time establishes different minimum wage rates (referred to in paragraph 2 (a), (b), and (c) hereof) all contracts for work on the project shall be adjusted accordingly by the parties thereto so that the contract price to the contractor under any contract or to any subcontractor under any subcontract shall be increased by an amount equal to any such increased cost, or decreased in an amount equal to such decreased cost.

(i) Engineers, architects, and other professional and subprofessional employees engaged in duties normally done at the site of the project shall receive at least the prevailing rates for the various types of service to be rendered, provided that in no case shall professional employees receive less than the following weekly compensation for 40 hours

or less irrespective of the number of hours employed: $36.00 in the northern zone; $33.00 in the central zone; and $30.00 in the southern zone. Where the working week is longer than 40 hours, weekly compensation shall be increased proportionally. Compensation under this paragraph shall be subject to the approval of the Government Engineer.

3. (a) *Labor preferences.*—Preference shall be given, where they are qualified, to ex-service men with dependents, and then in the following order: (1) To citizens of the United States and aliens who have declared their intention of becoming citizens, who are bona fide residents of (political subdivision and/or county) _____ and (2) to citizens of the United States and aliens who have declared their intention of becoming citizens, who are bona fide residents of (State, Territory, or district) _____: Provided, That these preferences shall apply only where such labor is available and qualified to perform the work to which the employment relates.

(b) *Employment services.*—To the fullest extent possible, labor required for the project and appropriate to be secured through employment services shall be chosen from the lists of qualified workers submitted by local employment agencies designated by the United States Employment Service: *Provided, however,* That union labor, skilled and unskilled, shall not be required to register at such local employment agencies but,

if such labor is desired by the employer, shall be secured in the customary ways through recognized union locals. In the event, however, that employers who wish to employ union labor are not furnished with qualified union workers by the union locals which are authorized to furnish such labor residing in the locality within 48 hours (Sundays and holidays excluded) after request is filed by the employer, all labor shall be chosen from lists of qualified workers submitted by local agencies designated by the United States Employment Service. In the selection of workers from lists prepared by such employment agencies and union locals, the labor preferences provided in section (a) of this paragraph 3 shall be observed, and preference shall be given to those unemployed at the date of registration who, at the date of selection, have no other available employment.

(c) *Compliance with Title I of the Act.*— The following sections 7 (a) (1) and 7 (a) (2) of Title I of the Act shall be observed:

"(1) That employees shall have the right to organize and bargain collectively through representatives of their own choosing, and shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection; (2) that no employees and no

one seeking employment shall be required as a condition of employment to join any company union or to refrain from joining, organizing, or assisting a labor organization of his own choosing."

4. *Human labor.*—The maximum of human labor shall be used in lieu of machinery wherever practicable and consistent with sound economy and public advantage; and to the extent that the work may be accomplished at no greater expense by human labor than by the use of machinery, and labor of requisite qualifications is available, such human labor shall be employed.

5. *Compensation insurance.*—Every employer of labor shall provide, if permitted by the laws of South Carolina, adequate workmen's compensation insurance for all labor employed by him on the project who may come within the protection of such laws and shall provide, where practicable, employers' general liability insurance for the benefit of his employees not protected by such compensation laws, and proof of such insurance satisfactory to the Government engineer shall be given. Where it is not permitted by law that such insurance be provided, some method satisfactory to the Administrator must be provided by which the employees may, by paying the entire amount of the premiums, derive a similar protection.

6. *Persons entitled to benefits of labor provisions.*—There shall be extended to every person who performs the work of a

laborer or of a mechanic on the project or on any part thereof the benefits of the labor and wage provisions of this contract, regardless of any contractual relationship between the employer and such laborer or mechanic. There shall be no discrimination in the selection of labor on the ground of race, creed, or color.

7. *Withholding payment.* — Under all construction contracts, Greenwood County (The borrower) may withhold from the contractor so much of accrued payments as may be necessary to pay to laborers or mechanics employed on the work the difference between the rate of wages required by this contract to be paid to laborers or mechanics on the work and the rate of wages actually paid to such laborers or mechanics.

8. *Accident prevention.*—Reasonable precautions shall at all times be exercised for the safety of employees on the work and applicable provisions of the Federal, State, and municipal safety laws and building and construction codes shall be observed. All machinery and equipment and other physical hazards shall be guarded in accordance with the safety provisions of the Manual of Accident Prevention in Construction of the Associated General Contractors of America, unless and to the extent that such provisions are incompatible with Federal, State, or municipal laws or regulations.

9. *N. R. A. Compliance.*—The contractor shall comply with each approved code of fair competition to which he is subject, and

if he is engaged in any trade or industry for which there is no approved code of fair competition, then as to such trade or industry with an agreement with the President under Section 4 (a) of the National Industrial Recovery Act (President's Reemployment Agreement), and Greenwood County (The borrower) shall have the right, subject to the approval of the Government engineer, to cancel this contract for failure to comply with this provision and make open market purchases or have the work called for by this contract otherwise performed at the expense of the contractor. So far as articles, materials or supplies produced in the United States are concerned, no articles, materials or supplies shall be accepted or purchased for the performance of the work nor shall any subcontracts be entered into for any articles, materials or supplies, in whole or in part produced or furnished by any person who shall not have certified that he is complying with and will continue to comply with each code of fair competition which relates to such articles, materials or supplies, and/or in case there is no approved code for the whole or any portion thereof then to that extent with an agreement with the President as aforesaid.

10. (a) *Inspection of records.*—The Administrator, through his authorized agents, shall have the right to inspect all work as it progresses, and shall have access to all pay rolls, records of personnel, invoices of mate-

rials, and any and all other data relevant to the performance of this contract. There shall be submitted to the Administrator, through his authorized agents, the names and addresses of all personnel and such schedules of the cost of labor, costs and quantities of materials, and other items, supported as to correctness by such evidence, as, and in such form as, the Administrator, through his authorized agents, may require. The submission and approval of said schedules, if required, shall be a condition precedent to the making of any payment under the contract.

(b) There shall be provided for the use of the engineer inspector such reasonable facilities as he may request. In case of dispute the Government engineer shall determine the reasonableness of the request.

11. *Reports.*—Every employer of labor on the project shall report within 5 days after the close of each calendar month, on forms to be furnished by the United States Department of Labor, the number of persons on their respective pay rolls directly connected with the project, the aggregate amounts of such pay rolls, and the man-hours work, wage scales paid to the various classes of labor, and the total expenditures for materials. Two copies of each of such monthly reports are to be furnished to the Government engineer, and one copy of each to the United States Department of Labor. The contractor under any construction contract shall also furnish to Greenwood County

(the borrower) to the Government engineer and to the United States Department of Labor the names and addresses of all subcontractors on the work at the earliest date practicable.

12. There shall be provided all necessary services and all materials, tools, implements, and appliances required to perform and complete entirely and in a workmanlike manner the work provided for in this contract. Except as otherwise approved in writing by the Government engineer, such services shall be paid for in full at least once a month and such materials, tools, implements, and appliances shall be paid for at least once a month to the extent of 90 percent of the cost thereof to the contractor, and the remaining 10 percent shall be paid 30 days after the completion of the part of the work in or on which such materials, tools, implements, or appliances are incorporated or used.

13. *Signs.*—Signs bearing the legend Public Works Project No. 3972 shall be erected in appropriate places at the site of the project.

14. All reasonable rules and regulations which the Public Works Administration may prescribe toward the effectuation of the matters covered by paragraphs 1 to 13, inclusive, shall be observed in the performance of the work.

15. *Subcontractors.*—(a) Appropriate provisions shall be inserted in all subcontracts relating to this work to insure the fulfillment of all provisions of this contract

affecting such subcontractors, particularly paragraphs 1 to 14, inclusive.

(b) No bid shall be received from any subcontractor who has not signed U. S. Government Form No. P. W. A. 61, revised (March 1934).

16. *Termination for breach.*—In the event that any of the provisions of paragraphs 1 to 15, inclusive, of this contract are violated by the contractor under the construction contract or by any subcontractor under any subcontract on the work, Greenwood County (The borrower) may, subject to the approval of the Government engineer, and upon request of the Administrator, shall terminate the contract by serving written notice upon the contractor of its intention to terminate such contract, and, unless within 10 days after the serving of such notice such violation shall cease, the contract shall, upon the expiration of said 10 days, cease and terminate. In the event of any such termination Greenwood County (the borrower) may take over the work and prosecute the same to completion or otherwise for the account and at the expense of the contractor and/or such subcontractor, and the contractor and his sureties shall be liable to Greenwood County (the borrower) for any excess cost occasioned Greenwood County (the borrower) in the event of any such termination, and Greenwood County (the borrower) may take possession of and utilize in completing the work, such materials, appliances, and plant as may be on the site of the work, and necessary

therefor. This clause shall not be construed to prevent the termination for other causes provided in the construction contract.

17. *Definitions.*—The term "Act" as used herein refers to the National Industrial Recovery Act. The term "Government engineer" as used herein shall mean the State engineer (P. W. A.) or his duly authorized representative, or any person designated to perform his duties or functions under this agreement by the Administrator. The term "engineer inspector" as used herein refers to State engineer inspectors, resident and assistant resident engineer inspectors, and supervising engineers, appointed by the Administrator. The term "materials" as used herein includes, in addition to materials incorporated in the project used or to be used in the operation thereof, equipment and other materials used and/or consumed in the performances of the work.

2. *Restriction as to Contractors.*—The Borrower shall receive no bid from any contractor, nor permit any contractor to receive any bid from any subcontractor, who has not signed U. S. Government Form No. P. W. A. 61, revised March 1934.

3. *Bonds and Insurance.*—Construction contracts shall be supported by adequate surety or other bonds or security satisfactory to the Administrator for the protection of the Borrower, or materialmen, and of labor employed on the Project or any part thereof. The contractor under any construction contract shall be required to provide

public liability insurance in an amount satisfactory to the Administrator.

4. *Force Account.*—All construction work on the Project shall be done under contract, provided, however, that if prices in the bids are excessive, the Borrower reserves the right, anything in this Agreement to the contrary notwithstanding, to apply to the Administrator for permission to do all or any part of the Project on a force account basis.

This agreement shall be binding upon the parties hereto when a copy thereof, duly executed by the Borrower and the Government, shall have been received by the Borrower. This agreement shall be governed by and be construed in accordance with the laws of the State. If any provision of this Agreement shall be invalid in whole or in part, to the extent it is not invalid it shall be valid and effective and no such invalidity shall affect, in whole or in part, the validity and effectiveness of any other provision of this Agreement or the rights or obligations of the parties hereto, provided, however, that in the opinion of the Administrator, the Agreement does not then violate the terms of the Act; provided, however, that this Agreement shall not be construed so as to create a debt of Greenwood County or so as to in any manner impose a liability upon the general credit of said County or its taxing powers, it being the intention of this Agreement to provide that the payment of the

principal of and interest on the bonds and the maintenance and operation of the hydro-electric system shall be paid solely and exclusively from the revenues derived from the operation of the said system herein described, and that the costs of constructing and completing said system shall be paid exclusively from the proceeds of the bonds and the Grant herein described.

IN WITNESS WHEREOF, the Borrower and the Government have respectively caused this Agreement, to be duly executed as of December 8, 1934.

By County of Greenwood, South Carolina:

Signed and Approved:

E. L. BROOKS,
County Supervisor.

[SEAL] (Signed) S. A. AGNEW,
County Treasurer.

E. L. BROOKS,
County Supervisor.

Attest:

E. I. DAVIS,
Secretary, Finance Board for Greenwood County.

UNITED STATES OF AMERICA,
By HAROLD L. ICKES,
Federal Emergency Administrator of Public Works.

7. NEW CONTRACT BETWEEN P. W. A. AND GREENWOOD COUNTY

FEDERAL EMERGENCY ADMINISTRATION
OF PUBLIC WORKS,
Washington, D. C.

Superseding Loan and Grant Agreement Between the County of Greenwood, South Carolina, and the United States of America (P. W. A. Docket No. 3972)

WHEREAS the United States of America and the County of Greenwood, South Carolina, entered into a loan and grant agreement dated as of December 8, 1934, and

WHEREAS it is deemed to the mutual advantage of said parties to terminate said loan and grant agreement and to substitute in place thereof a new agreement,

Now, therefore, it is hereby agreed by and between said parties, that said Loan and Grant Agreement dated as of December 8, 1934, be and the same hereby is terminated and the following agreement by and between said parties substituted in lieu thereof:

1. *Loan and Grant.*—The United States of America (herein called the "Government") will aid in financing the construction of a hydroelectric

plant comprising an earthen dam across the Saluda River, a 15,000-Kw. Generating Station with necessary control equipment, transmission lines, and rural distribution (herein called the "Project"), by making a loan and grant to the County of Greenwood, South Carolina (herein called the "Applicant"), in an amount not exceeding in the aggregate the sum of $2,852,000.

2. *Method of Making Loan.*—The Government will purchase from the Applicant, at the principal amount thereof plus accrued interest, obligations (hereinafter called the "Bonds") of the description set forth below (or such other description as shall be mutually satisfactory) in the aggregate principal amount of $2,219,000, less such amount of such Bonds, if any, as the Applicant may sell to purchasers other than the Government:

(a) Obligor: The County of Greenwood.

(b) Type: Negotiable, special obligation, revenue serial coupon bond.

(c) Denomination: $1,000.

(d) Date: October 1, 1934.

(e) Interest rate and interest payment dates: Four per centum per annum, payable semiannually on April 1 and October 1.

(f) Place of payment: At the office of the Treasurer of the Applicant in the City of Greenwood, South Carolina, or, at the option of the holder, at the office of the fiscal agent of the Applicant in the Borough of Manhattan, City and State of New York.

(g) Registration privileges: As to principal only at the option of the holder.

(h) Maturities: October 1 in years and amounts as follows:

1936	$48,000	1949	$92,000
1937	53,000	1950	92,000
1938	58,000	1951	97,000
1939	63,000	1952	102,000
1940	68,000	1953	107,000
1941	68,000	1954	112,000
1942	73,000	1955	112,000
1943	73,000	1956	112,000
1944	73,000	1957	117,000
1945	78,000	1958	122,000
1946	82,000	1959	122,000
1947	87,000	1960	121,000
1948	87,000		

(i) Payable as to both principal and interest from and secured by a pledge of, and first lien on a fixed amount of the gross revenues derived from the operation of the entire hydroelectric power generating, transmission, and distribution system, which fixed amount shall be sufficient at all times to pay the principal of and interest on the Bonds as and when the same become due and payable, and additionally secured by a statutory lien upon the system and any extensions or appurtenances thereto.

3. *Amount of Grant.*—The Government will make the grant in an amount equal to thirty per-cent (30%) of the cost of labor and materials employed upon the Project, but not to exceed, in any event, the sum of $682,000.

4. *Conditions Precedent.*—The Government will be under no obligation to take up and pay for any

Bonds which it herein agrees to purchase or to make any grant:

(a) *Financial Condition.*—If the financial condition of the Applicant shall have changed unfavorably in a material degree from its condition as theretofore represented to the Government.

(b) *Cost of Project.*—If it appears that the Applicant will not be able to complete the Project for the sum allotted by the Government, or that the Applicant will not be able to obtain any funds which, in addition to such sum, will be necessary to complete the Project.

(c) *Plans and Specifications and Certificate of Purposes.*—If the Applicant shall not have filed with the Government plans and specifications for the Project accompanied by a certificate of purposes setting out in detail the amounts and purposes of the expenditures which the Applicant proposes to make in connection with the Project, and the Government shall not have accepted such plans and specifications and such certificate of purposes as showing that the Project will be constructed in such a manner as to provide reasonable security for the loan to be made by the Government and to comply with Title II of the National Industrial Recovery Act in all other respects.

5. *Interest of Member of Congress.*—No member of or Delegate to the Congress of the United States of America shall be allowed to participate in the funds made available for the construction of the Project or to any benefit arising therefrom.

6. *Bonus or Commission.*—The Applicant shall not pay any bonus or commission for the purpose of obtaining an approval of its application for a loan and grant.

7. *Information.*—The Applicant shall furnish the Government with reasonable information and data concerning the construction, cost, and progress of the work. Upon request the Applicant shall also furnish the Government, and any purchaser from the Government of at least 25 percent of the Bonds, with adequate financial statements and other reasonable information and data relating to the Applicant.

8. *Bond Circular.*—The Applicant shall furnish all such information in proper form for the preparation of a bond circular and shall take all such steps as the Government or any purchaser or purchasers from the Government of not less than 25 percent of the Bonds may reasonably require to aid in the sale by the Government or any such purchaser or purchasers of any or all of the Bonds.

9. *Insurance.*—The Applicant shall carry reasonable and adequate insurance upon the completed Project or any completed part thereof accepted by the Applicant or the system of which the Project is a part.

10. *Name of Project.*—The Applicant shall not name the Project for any living person.

11. *Grant and Bond Payments.*

(a) *Payment for Bonds.*—A requisition requesting the Government to take up and pay for Bonds

will be honored as soon as possible after such Bonds are ready for delivery, if the bond transcript and other documents necessary to support such requisition are complete.

(b) *Grant Payments.*—Simultaneously with the delivery of and payment for the Bonds by the Government, or, where Bonds are taken up and paid for in more than one installment, simultaneously with the delivery of and payment for the final installment, if the Applicant shall so requisition and if such requisition is accompanied by a signed certificate of purposes in which appear in reasonable detail the purposes for which the funds will be used and that such funds will be used for items properly included as part of the cost of the Project, the Government will make a grant of an amount equal to 15 percent of the previously estimated cost of labor and materials employed upon the Project. When the Project shall be approximately 70 percent completed the Applicant may file its requisition for an additional grant in an amount which together with the previous grant payment is equal to 30 percent of the cost of labor and materials employed upon the Project. The grant requisitions will be honored if the documents necessary to support such requisitions are complete and work on the Project has progressed in accordance with the provisions of this Agreement.

(c) *Final Grant Payment.*—At any time after completing the Project, the Applicant may file a requisition requesting the remainder of the grant

which, together with all previous payments on account of such grant, shall be an amount equal to 30 percent of the cost of labor and materials employed upon the Project, but not to exceed, in any event, the sum of $682,000. The final grant requisition will be honored if the documents necessary to support it are complete and work on the Project has been completed in accordance with the provisions of this Agreement. The final grant payment may be made either wholly by the payment of money, or partially by payment of money and partially by cancellation of Bonds or, interest coupons or both, or wholly by such cancellation.

(d) *Construction Account.*—A separate account or accounts (herein collectively called the "Construction Account") shall be set up in a bank or banks which are members of the Federal Deposit Insurance Corporation and of the Federal Reserve System. The advance grant payments, the proceeds from the sale of the Bonds (exclusive of accrued interest and an amount, if any, representing interest during construction), and any other moneys which shall be required in addition to the foregoing to pay the cost of constructing the Project, shall be deposited in the Construction Account, promptly upon receipt thereof. All accrued interest paid by the Government at the time of delivery of the Bonds shall be paid into a separate account (herein called the "Bond Fund"). Payments for the construction of the Project shall be made only from the Construction Account.

(e) *Disbursement of Moneys in Construction Account.*—Moneys in the Construction Account shall be expended only for such purposes as shall have been previously specified in the certificate of purposes filed with and accepted by the Government. All moneys remaining in the Construction Account after all costs incurred in connection with the Project have been paid shall either be used to repurchase Bonds, if any such Bonds are then held by the Government, or be transferred to the Bond Fund.

(f) *Use of Moneys in Bond Fund.*—Moneys in the Bond Fund shall be expended solely for the purpose of paying interest on and principal of the Bonds.

11A. *Construction of Project.*—The following principles have been adopted by the Federal Emergency Administration of Public Works in order to effectuate the purposes of Title II of the National Industrial Recovery Act, and the making of the loan and grant herein set forth is conditioned upon the adoption of said principles by the Applicant, in the exercise of its lawful discretion, and upon its applying the same in the construction of the Project.

(a) That if a project is to be constructed under contract, contracts should be awarded to the lowest responsible bidder pursuant to public advertisement and that every opportunity be given for free, open, and competitive bidding for contracts for

construction and contracts for the purchase of materials and equipment.

(b) That the use in the specifications or otherwise of the name of a proprietary product or the name of the manufacturer or vendor to define the material or product required, unless such name is followed by the term "or equal", is considered contrary to the policy of free, open, and competitive bidding. Where such a specification is used in lieu of descriptive detail of substance and function, the term "or equal" is to be literally construed so that any material or article which will perform adequately the duties imposed by the general design will be considered satisfactory.

(c) That, in the interest of standardization or ultimate economy, the contract may be awarded to other than the actual lowest bidder for the supplying of materials and equipment.

(d) That, in order to insure completion of a project within the funds available for the construction thereof, faithful performance of construction contracts will be assured by requiring performance bonds written in an amount equal to 100% of the contract price by one or more corporate sureties financially able to assume the risk, and that such bonds will be further conditioned upon the payment of all persons supplying labor and furnishing materials for the construction of the project, except where it is required by the law of South Carolina that protection for labor and materialmen be provided by a bond separate from the performance

bond. In such latter case, a performance bond in an amount equal to 100% of the contract price supplemented by a separate labor and materialmen's bond in an amount not less than 50% of the contract price will be adequate. However, where the contract price exceeds $1,000,000, and the obtaining of a bond written in such amount is difficult, a bond in an amount not less than 50% of the contract price will be adequate.

(e) That, if the work on any proposed construction contract is hazardous, the contractor will be required to provide public liability insurance and property damage insurance in amounts reasonably sufficient to protect the contractor and each subcontractor.

(f) That minimum or other wage rates required to be predetermined by the law of South Carolina or local ordinance shall be predetermined in accordance therewith by the public body constructing the project, and incorporated in the appropriate contract documents. In the absence of applicable law or ordinance, such public body shall predetermine minimum wage rates, in accordance with customary local rates, for all the trades and occupations to be employed on the project, and incorporate them in the appropriate contract documents.

(g) That the work shall be commenced as quickly as possible after funds are made available and be continued to completion with all practicable dispatch in an efficient and economical manner.

(h) That the project will be constructed in accordance with the provisions of the attached Exhibit A which is hereby made a part hereof; to insure this purpose appropriate provisions will be incorporated in all contracts (except subcontracts) for work to be performed at the site of the project. (Exhibit A has been so worded that the provisions thereof may, if the public body constructing the project so desires, be inserted verbatim in such construction contracts or contract.)

12. The Administrator and the Government shall have no rights or power of any kind with respect to the rates to be fixed or charged for the services and facilities afforded by the Project, excepting only such rights as they may have as a holder of such Bonds under the laws and the Constitution of South Carolina and the lawful proceedings of the Applicant, taken pursuant thereto, in authorizing the issuance of such Bonds.

13. This Agreement is made with the express understanding that neither the loan nor the grant herein described is conditioned upon compliance by the Applicant with any conditions not expressly set forth herein. There are no other agreements or understandings between the Applicant and the Government or any of its agencies in any way relating to said Project.

14. This entire contract is subject to the terms of the injunction decree entered by the District Court of the United States for the Western District of South Carolina.

In Witness Whereof, the Applicant and the Government have respectively caused this Agreement to be duly executed as of November 30th, 1935.

Signed and Approved.

By County of Greenwood, South Carolina:

E. L. Brooks,
County Supervisor.

[seal] (Signed) S. A. Agnew,
County Treasurer.

E. L. Brooks,
County Supervisor.

Attest:

E. I. Davis,
Secretary of Finance Board for Greenwood County.

United States of America,
Federal Emergency Administrator of Public Works,
By Horatio B. Hackett,
Assistant Administrator.

Exhibit A

1. (a) *Convict Labor.*—No convict labor shall be employed on the project, and no materials manufactured or produced by convict labor shall be used on the project unless required by law.

(b) *Thirty-hour Week.*—Except in executive, administrative, and supervisory positions no individual directly employed on the project shall be per-

mitted to work more than 8 hours in any 1 day nor more than 30 hours in any 1 week: PROVIDED, That this clause shall be construed to permit working time lost because of inclement weather or unavoidable delays in any 1 week to be made up in the succeeding 20 days.

2. *Wages and Pay Rolls.*—(a) There shall be paid each employee engaged in the trade or occupation listed below not less than the hourly wage rates set opposite the same, namely:

Trade Occupation	Hourly Wage Rate
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(Insert Wage Schedule Here)

If after the award of this contract it becomes necessary to employ any person in a trade or occupation not herein listed, such person shall be paid not less than such hourly rate of wage, fairly comparable to the above rates and such minimum wage rate shall be retroactive to the time of the initial employment of such person in such trade or occupation.

(b) Unless otherwise provided by law, claims or disputes pertaining to the classifications of labor under this contract shall be decided by the Owner whose decision shall be binding on all parties concerned.

(c) All employees shall be paid in full not less often than once each week and in lawful money of the United States, in the full amount accrued to each individual at the time of closing of the pay

roll, which shall be at the latest date practicable prior to the date of payment, and there shall be no deductions or rebates on account of goods purchased, rent, or other obligations, but such obligations shall be subject to collection only by legal process: PROVIDED, HOWEVER, That this clause shall not be construed to prohibit the making of deductions for premiums for compensation and medical-aid insurance, in such amounts as are authorized by the laws of _____ to be paid by employee, in those cases in which, after the making of the deductions, the wage rates will not be lower than the minimum wage rates herein established.

(d) A clearly legible statement of all wage rates to be paid the several classes of labor employed on the work, together with a statement of the deductions therefrom for premiums for workmen's compensation and/or medical aid insurance authorized by the laws of _____, should such deductions be made, shall be posted in a prominent and easily accessible place at the site of the work, and there shall be kept a true and accurate record of the hours worked by and the wages, exclusive of all authorized deductions, paid to each employee, and the Government Inspector shall be furnished with sworn pay rolls in accordance with the "Regulations Issued Pursuant to So-called 'Kick-Back Statute.' "

3. (a) *Labor preferences.*—Preference shall be given, where they are qualified, to ex-service men with dependents, and then in the following order:

(1) to citizens of the United States and aliens who have declared their intention of becoming citizens, who are bona fide residents of (political subdivisions and/or county) _____ and (2) to citizens of the United States and aliens who have declared their intention of becoming citizens, who are bona fide residents of (State, Territory, or District) _____ PROVIDED, That these preferences shall apply only where such labor is available and qualified to perform the work to which the employment relates.

(b) *Collective Bargaining.*—Employees shall have the right to organize and bargain collectively through representatives of their own choosing, and shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection. No employee and no one seeking employment shall be required as a condition of employment to join any company union or to refrain from joining, organizing, or assisting a labor organization of his own choosing.

4. *Human Labor.*—The maximum of human labor shall be used in lieu of machinery wherever practicable and consistent with sound economy and public advantage; and to the extent that the work may be accomplished at no greater expense by human labor than by the use of machinery, and

labor of requisite qualifications is available, such human labor shall be employed.

5. *Insurance.*—The contractor shall not commence work under this contract until he has obtained all insurance required under this paragraph and such insurance has been approved by the Owner, nor shall the contractor allow any subcontractor to commence work on his subcontract until all similar insurance required of the subcontractor has been so obtained and approved.

(a) *Compensation Insurance.*—The contractor shall take out and maintain during the life of this contract adequate Workmen's Compensation Insurance for all his employees employed at the site of the project and, in case any work is sublet, the contractor shall require the subcontractor similarly to provide Workmen's Compensation Insurance for the latter's employees, unless such employees are covered by the protection accorded by the contractor. In case any class of employees engaged in hazardous work under the contract at the site of the project is not protected under the Workmen's Compensation statute, or in case there is no applicable Workmen's Compensation statute, the contractor shall provide and shall cause each subcontractor to provide, _____ for the protection of his employees not otherwise protected.

(b) *Public Liability and Property Damage Insurance.*—The contractor shall take out and maintain during the life of this contract such Public

Liability and Property Damage Insurance as shall protect him and any subcontractor performing work covered by this contract from claims for damages for personal injury, including wrongful death, as well as from claims for property damages, which may arise from operations under this contract, whether such operations be by himself or by any subcontractor or anyone directly or indirectly employed by either of them. The amounts of such insurance shall be as follows:

> Public Liability Insurance in an amount not less than $_____ for injuries, including wrongful death, to any one person, and, subject to the same limit for each person, in an amount not less than $_____, on account of one accident, and Property Damage Insurance in an amount not less than $_____.

Provided, however, that the Owner may accept insurance covering a subcontractor in character and amounts less than the standard requirements set forth under this subparagraph (b) where such standard requirements appear excessive because of the character or extent of the work to be performed by such subcontractor.

(c) The following special hazards shall be covered by rider or riders to the policy or policies required under the subparagraph (b) hereof or by separate policies or insurance in amounts as follows:

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6. *Persons entitled to benefits of labor provisions.*—There shall be extended to every person who performs the work of a laborer or of a mechanic on the project or on any part thereof the benefits of the labor and wage provisions of this contract, regardless of any contractual relationship between the employer and such laborer or mechanic. There shall be no discrimination in the selection of labor on the ground of race, creed, or color.

7. *Withholding payment.*—The owner may withhold from the contractor so much of accrued payments as may be necessary to pay to laborers or mechanics employed on the work the difference between the rate of wages required by this contract to be paid to laborers or mechanics on the work and the rate of wages actually paid to such laborers or mechanics, and disburse the withheld funds, for and on account of the contractor, in the amounts and to the employees to whom they are due.

8. *Accident Prevention.*—Precaution shall be exercised at all times for the protection of persons and property. The safety provisions of applicable laws, buildings, and construction codes shall be observed. Machinery and equipment and other hazards shall be guarded in accordance with the safety provisions of the Manual of Accident Prevention in Construction, published by the Associated General Contractors of America, to the extent that such provisions are not inconsistent with applicable law or regulation.

9. *Domestic Materials.*—Unless contrary to law, in the performance of this contract the contractor, subcontractors, materialmen, or suppliers shall use only such unmanufactured articles, materials, and supplies as have been mined or produced in the United States, and only such manufactured articles, materials, and supplies as have been manufactured in the United States substantially all from articles, materials, or supplies mined, produced, or manufactured, as the case may be, in the United States, except, unless otherwise required by law, foreign materials, articles, or supplies may be purchased, upon obtaining the consent of the Owner, if the foreign materials, articles, or supplies are lower in cost after the following differentials are applied in favor of domestic articles, materials, or supplies:

On purchases where the foreign bid is $100 or less, a differential of 100% will apply;

On purchases where the foreign bid exceeds $100, a differential of 25% will apply.

10. (a) *Inspection.*—The Owner reserves the right to permit such inspectors and inspection as it sees fit and hereby requires that such inspectors shall have the right to inspect all work as it progresses, and shall have access to all pay rolls, records of personnel, invoices of materials, and any and all other data relevant to the performance of this contract. The contractor shall submit to the Owner, through his authorized agents, the names

and addresses of all personnel and such schedules of the cost of labor, costs and quantities of materials, and other items, supported as to correctness by such evidence, as, and in such form as, the Owner, through his authorized agents, may require.

(b) Facilities shall be provided as set forth in the specifications for the use of the Government Inspector.

11. *Reports.*—The contractor and each subcontractor shall report on forms to be furnished by the United States Department of Labor, the number of persons on their respective pay rolls directly connected with the project, the aggregate amounts of such pay rolls, and the man-hours worked, wage scales paid to the various classes of labor, and the total expenditures for materials. Forms will be supplied by the Department of Labor on the 15th of each month. The reports will cover all pay rolls from the 15th of the previous month to the 15th of the current month. One copy of each of such monthly reports is to be furnished to the State Director, one to the Division of Economics and Statistics, P. W. A., and one to the United States Department of Labor, prior to the 5th day of the following month. The contractor shall also furnish to the Owner, to the State Director, and to the United States Department of Labor, the names and addresses of all subcontractors on the work at the earliest date practicable.

12. *Payments.*—(a) The contractor shall provide all labor, services, materials, and equipment neces-

sary to perform and complete the work under this contract. Except as otherwise approved by the Owner, the contractor (1) shall pay for in full all transportation and utility services on or before the 20th day of the month following the calendar month in which such services are rendered, and (2) shall pay for all materials, tools, and other expendible equipment, to the extent of 90 percent of the cost thereof, on or before the 20th day of the month following the calendar month in which such materials, tools, and equipment are delivered to the project, and the balance of the cost within 30 days after completion of that part of the work in or on which such materials, tools, and other equipment are incorporated or used.

(b) *Payment of Subcontractor.*—In the absence of other provisions in this contract more favorable to the subcontractor, the contractor shall pay each subcontractor, within 5 days after each payment made to the contractor, the amount allowed the contractor for and on account of the work performed by the subcontractor, to the extent of the subcontractor's interest therein.

13. *Signs.*—The contractor shall furnish signs bearing the legend: "FEDERAL PUBLIC WORKS PROJECT NO. _____", as required in the specifications and shall erect the same at such locations as may be designated by the Owner.

14. *Subcontracts.*—Paragraphs 1 to 4, inclusive, 6, 8 to 13, inclusive, 17, the Regulations Issued Pur-

suant to So-called "Kick-Back Statute" and Section 35 of the Criminal Code, as amended, shall be inserted verbatim in all construction subcontracts under this contract.

15. *Assignment of Contract.*—The contractor shall not assign this contract or any part hereof without the approval of the Owner, nor with the consent of surety unless the surety has waived its right to notice of assignment.

16. *Termination for Breach.*—In the event that any of the provisions of this contract are violated by the contractor or by any of his subcontractors, the Owner may serve written notice upon the contractor and the surety of its intention to terminate such contract, such notices to contain the reasons for such intention to terminate the contract, and, unless within 10 days after the serving of such notice upon the contractor such violation shall cease and satisfactory arrangement for correction be made, the contract shall, upon the expiration of said 10 days, cease and terminate. In the event of any such termination, the Owner shall immediately serve notice thereof upon the surety and the contractor, and the surety shall have the right to take over and perform the contract, provided, however, that if the surety does not commence performance thereof within 30 days from the date of the mailing to such surety of notice of termination, the Owner may take over the work and prosecute the same to completion by contract for the account and at the expense of the contractor, and the contractor

and his surety shall be liable to the Owner for any excess cost occasioned the Owner thereby, and in such event the Owner may take possession of and utilize in completing the work, such materials, appliances, and plant as may be on the site of the work and necessary therefor.

17. *Definitions.*—The term "Act" as used herein refers to Title II of the National Industrial Recovery Act. The term "State Director" as used herein refers to the State Director (P. W. A.) or his duly authorized representative, or any person designated to perform his duties or functions under this agreement by the Administrator. The term "Government Inspector" as used herein refers to State Engineer Inspectors, resident and assistant resident engineer inspectors, and supervising engineers, appointed by the Administrator. The term "materials" as used herein includes, in addition to materials incorporated in the project used or to be used in the operation thereof, equipment and other materials used and/or consumed in the performance of the work. The term "Owner" as used herein refers to the public body, agency, or instrumentality which is a party hereto and for which this contract is to be performed.

The 30-hour week requirement shall be construed—

(a) To permit the limitation of not more than 130 hours' work in any 1 calendar month to be substituted for the requirement of not more than 30 hours' work in any 1 week on projects in locali-

ties where a sufficient amount of labor is not available in the immediate vicinity of the work.

(b) To permit work up to 8 hours a day or up to 40 hours a week on projects located at points so remote and inaccessible that camps or floating plants are necessary for the housing and boarding of all the labor employed.

In case it shall be determined prior to advertisement that any projects fall within the terms of (a) hereof, the following proviso shall be added at the end of paragraph 1 (b):

And provided further, It having been determined prior to advertisement that a sufficient amount of labor is not available in the immediate vicinity of the work, that a limitation of not more than 130 hours' work in any 1 calendar month may be substituted for the requirement of not more than 30 hours' work in any 1 week on the project.

In case it shall be determined prior to advertisement that any project falls within the terms of (b) hereof, the following section shall be substituted in the place of paragraph 1 (b):

(b) *Hours of Labor.*—Except in executive, administrative, and supervisory positions, no individual directly employed on the project shall be permitted to work more than 40 hours in any 1 week nor more than 8 hours in any 1 day. It having been determined prior to advertisement that the work will be located at points so remote and inaccessible that camps or floating plants are necessary for the housing and boarding of all the labor

employed, this provision shall apply in lieu of the usual 30-hour terms.

Regulations Issued Pursuant to So-Called "Kick-Back Statute"

Pursuant to the provisions of Public Act No. 324, Seventy-third Congress, approved June 13, 1934 (48 Stat. 948), concerning rates of pay for labor, the Secretary of the Treasury and the Secretary of the Interior hereby jointly promulgate the following regulations:

SECTION 1. Said Act reads as follows:

> To effectuate the purpose of certain statutes concerning rates of pay for labor, by making it unlawful to prevent anyone from receiving the compensation contracted for thereunder, and for other purposes.
>
> *Be It Enacted by the Senate and House of Representatives of the United States of America in Congress Assembled. That whoever shall* induce any person employed in the construction, prosecution, or completion of any public building, public work, or building or work financed in whole or in part by loans or grants from the United States, or in the repair thereof to give up any part of the compensation to which he is entitled under his contract of employment, by force, intimidation, threat or procuring dismissal from such employment, or by any other manner whatsoever, shall be fined not more than $5,000, or imprisoned not more than five years, or both.

SEC. 2. To aid in the enforcement of the above section, the Secretary of the Treasury and the Secretary of the Interior jointly shall make reasonable regulations for contractors or subcontractors on any such building or work, including a provision that each contractor and subcontractor shall furnish weekly a sworn affidavit with respect to the wages paid each employee during the preceding week.

SECTION 2. Each contractor and subcontractor engaged in the construction, prosecution, or completion of any building or work of the United States or of any building or work financed in whole or in part by loans or grants from the United States, or in the repair thereof, shall furnish each week an affidavit with respect to the wages paid each employee during the preceding week. Said affidavit shall be in the following form:

State of_____,

*County of*_____, *ss:*

I, _____ (name the party signing affidavit),_____ (Title), do hereby certify that I am (the employee of)_____(name of contractor or subcontractor) who supervises the payment of the employees of said contractor (subcontractor); that the attached pay roll is a true and accurate report of the full weekly wages due and paid to each person employed by the said contractor (subcontractor) for the construction of_____ (project) for the weekly pay roll period from the _____ day of _____ 193_____, to the _____

day of ------, 193------, that no rebates or deductions from any wages due any such person as set out on the attached pay roll have been directly or indirectly made; and that, to the best of my knowledge and belief, there exists no agreement or understanding with any person employed on the project, or any person whatsoever, pursuant to which it is contemplated that I or anyone else shall, directly or indirectly, by force, intimidation, threat, or otherwise, induce or receive any deductions or rebates in any manner whatsoever from any sum paid or to be paid to any person at any time for labor performed or to be performed under the contract for the above named project.

Sworn to before me this ------ day of ---------- 1932.

SECTION 3. Said affidavit shall be executed and sworn to by the officer or employee of the contractor or subcontractor who supervises the payment of its employees.

Said affidavit shall be delivered, within three days after the payment of the pay roll to which it is attached, to the Government representative in charge at the site of the particular project in respect of which it is furnished, who shall forward the same promptly to the Federal agency having control of such project. If no Government representative is in charge at the site, such affidavit shall be mailed within such three-day period to the Federal agency having control of the project.

SECTION 4. At the time upon which the first affidavit with respect to the wages paid to employees is required to be filed by a contractor or subcontractor pursuant to the requirements of these regulations, there shall also be filed in the manner required by Section 3 hereof a statement under oath by the contractor or subcontractor, setting forth the name of its officer or employee who supervises the payment of employees, and that such officer or employee is in a position to have full knowledge of the facts set forth in the form of affidavit required by Section 2 hereof. A similar affidavit shall be immediately filed in the event of a change in the officer or employee who supervises the payment of employees. In the event that the contractor or subcontractor is a corporation, such affidavit shall be executed by its president or a vice president. In the event that the contractor or subcontractor is a partnership, such affidavit shall be executed by a member of the firm.

SECTION 5. These regulations shall be made a part of each contract executed after the effective date hereof by the Government for any of the purposes enumerated in Section 2 hereof.

SECTION 6. These regulations shall become effective on January 15, 1935.

The clause in the pay roll affidavit which reads "* * * that the attached pay roll is a true and accurate report of the full weekly wages due and

paid to each person employed by the said contractor * * *'' is construed by the Public Works Administration to mean:

(a) Wages due are the wages earned during the pay period by each person employed by the contractor, less any deductions required by law.

(b) At the time of signing the affidavit, the wages due each employee have either been paid to him in full or are being held subject to claim by him.

(c) Such unpaid wages will be paid in full on demand of the employee entitled to receive them.

The clause ''* * * that no rebates or deductions from any wages due any such person as set out on the attached pay roll have been directly or indirectly made'' does not apply to any legitimate deductions mentioned above which enter into the computation of full weekly wages due.

The ''Regulations Issued Pursuant to So-Called 'Kick-Back' Statute'' shall not be construed to prohibit deductions required by law or deductions for health, sickness, unemployment, or other similar benefits voluntarily authorized by permanent employees of equipment supplies engaged in installation of the equipment at the site of the project.

Penalty

Section 35 of the Criminal Code, as amended, provides a penalty of not more than $10,000 or imprisonment of not more than 10 years, or both, for knowingly and willfully making or causing to be made "any false or fraudulent statements * * * or use or cause to be made or used any false * * * account, claim, certificate, affidavit, or deposition, knowing the same to contain any fraudulent or fictitious statement * * *" relating to any matter within the jurisdiction of any governmental department or agency.

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